

1992

Charles W. Webb v. Fred Van Der Veur : Brief of Appellant

Utah Court of Appeals

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Paul Van Dam; Utah Attorney General; David f. Bryant; Assistant Attorney General; Attorneys for Appellee.

Charles W. Webb; Pro Se.

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COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

CHARLES W. WEBB,

PETITIONER/APPELLANT,

V.

CASE NO. 920436-CA

FRED VAN DER VEUR,

Respondent/Appellee,

BRIEF OF APPELLANT

APPEAL FROM A DISMISSAL OF A WRIT OF
HABEAS CORPUS, IN THE SIXTH DISTRICT COURT,
IN AND FOR SANPETE COUNTY, STATE OF UTAH,
THE HONORABLE DAVID L. MOWER, PRESIDING

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NOTE ON CITATIONS

Citations to specific pages of Hearing Transcripts are as follows:

R. _____ Page _____

The Trail Transcript is cited as:

T. _____ page.

The Preliminary Hearing Transcripts are cited as:

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A. STATEMENT OF PROCEEDINGS.

Petitioner/defendant Charles W. Webb was jury tried in Third Judicial District Court, in and for Salt Lake County, State of Utah, before the Honorable James S. Sawaya. He was convicted of a first degree felony in violation of Utah Code Ann. §76-6-302(1978). On July 15, 1988 Judge James S. Sawaya sentenced petitioner to five years to life, and a mandatory one year for use of a firearm and discretionary five years for use of a firearm, each to run consecutively to the sentence of five years to life.

Petitioner Charles W. Webb was jointly tried with co-defendant, John E. Humphrey. Co-defendant John E. Humphrey was charged with count (1) aggravated robbery, and count (2) aggravated assault, the petitioner Charles W. Webb was jointly tried. When the petitioner was only charged with count (1) aggravated robbery.

Mr Webb appealed his conviction to The Supreme Court of The State of Utah Jurisdiction is conferred on this court pursuant to Utah Code Ann. §78-2-2(3)(i)(Supp.1988). On May 2, 1989 pursuant to the authority vested in The Supreme Court of Utah, this case No.880283 was poured over to the Court of Appeals, now case No. 890256-CA, the May 2, 1989, order appears in A-1. The Court of Appeals affirmed his conviction in an opinion for publication March 26, 1990, and the case remanded to the trial court with instructions to impose a maximum five year firearm enhancement

CONSTITUTITONAL PROVISIONS

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On December 2, 1991 appellant filed with the Supreme Court of the State of Utah, The Petition for writ of Habeas Corpus pursuant To Sec. 65 B (i), Utah Rules of Civil Procedure, and the Constitution of Utah, article 1 Sec. 5. on December 10, 1991 The Utah Supreme Court made appellant's Petition for writ of Habeas Corpus returnable to the Sixth District Court for Sanpete County, on the grounds that the Utah Supreme Court is an appellate court and does not take evidence.

The Sixth District Court for Sanpete County on april 22, 1992 dismissed the Petition for writ of habeas Corpus. on May 15, 1992 appellant set notice of appeal to the Sixth District Court that appellant was appealing to the Supreme Court of the State of Utah. on July 9, 1992 The Supreme Court poured-over the appellants appeal case no. 920251 to the Utah Court of appeals now Case no. 920436-CA.

term.

B. STATEMENT OF FACTS.

Karekine Karmilian, testified at the preliminary examination November 24, 1987, that on October 21, 1987, a man came into his store carrying a bag. He was in the backroom work area. He saw the suspect reach into the bag and pull out a shotgun. The man then told the victim to come out of the room. Mr. Karmilian went to the safe and took out two full drawers and put them into the bag the suspect was carrying. During direct examination (Pt.4)

Prosecutor: O.K. about what time of day was it that you got robbed.

The Witness: Around 3:30 afternoon.

Prosecutor: How many robbers were there?

The Witness: One person.

Prosecutor: Could you please describe what that robber looked like?

The Witness: About 54 to 50 years old was it and with the beard glasses, hat, jacket.

Prosecutor: Do you remember anything that he might have been carrying?

The Witness: Shotgun.

Prosecutor: Could you describe the shotgun?

The witness: Well it was short, about this. (PT.5)

Prosecutor: Your Honor the witness is indicating approximately 18 inches in length.

The witness: Yes.

Prosecutor: What color was it?

The Witness: Oh it was rusty when I saw the, my English is not perfect but I can make it to telling what.

Prosecutor: (PT.6) And what about the wooden part of the shotgun, did you see what color that was?

The witness: I don't think so.

Prosecutor: (PT.9) Now I would like you to think about the person who had the shotgun in your jewelry store that day.

The witness: Uh huh.

Prosecutor: Do you think you would be able to recognize him again if you saw him?

The witness: Yes.

Prosecutor: Is that person anywhere in this courtroom?

The witness: Yes.

Prosecutor: Would you please tell us where that person is?

The witness: That gentleman over there with the tattoo on

his hand.

Prosecutor: Your Honor may the record reflect that the witnesses is indicating Mr Humphrey.

Judge: It may so indicate.

Steven Lee Church, testified at the preliminary examination November 24, 1987, during direct examination (PT.40)

Prosecutor: And can you describe that shot gun?

The witness: It was a automatic pump shot gun 12 gauge, silver barrel with a wood stock.

Prosecutor: (PT.41) Had the shot gun been altered in anyway?

The witness: It appeared to be shortened sir.

Prosecutor: (PT.43) If you were to see the person with the shot gun again do you think you would be able to recognize him?

The witness: Yes sir I would.

Prosecutor: Would you please indicate where that person is?

The witness: The gentleman sitting next to the lady at the defence table, in the tee shirt.

Prosecutor: I see two different people sitting next to the lady at the counsel table and both of them are wearing tee shirts, on which side of her?

The witness: The gentlemen at the end, sir.

Prosecutor: Your Honor may the record reflect the identification of the defendant, Humphrey.

Judge: It may so indicate.

Prosecutor: Now you have indicated that this was a 12 gauge shot gun, why are you so sure?

The witness: I'm familiar with weapons, sir.

Prosecutor: Could you tell what color the stock of that weapon was?

The witness: A Maddick brown, natural finished wood, dark.

On cross examination of Steven Lee Church (PT.53) Lisa J Remal
Attorney for co-defendant John E Humphrey.

Lisa Remal: Did you see anybody as you came towards the store before this happened?

The witness: No mamn.

Lisa Remal: Did you run into anybody outside there?

The witness: No mamn.

Lisa Remal: A, the shotgun you have indicated that was a 12 gauge gun, I assume you have your experience with guns from the military primarily?

The witness: Yes mamn.

Lisa Remal: And you have indicated the color was it the

barrel was silver but the stock of it was dark wood?

The witness: Matt wood. Yes mamn Matt finish wood.

Lisa Remal: What do you mean by matt finish?

The witness: Non-glare, it was not high gloss.

Lisa Remal: How long would you say the barrel itself was?

The witness: It is difficult to estimate mamn, I don't know.

Lisa Remal: Any idea how long the whole gun was?

The witness: No mamn.

On November 3, 1987, Britt Martindale gave a statement to Sgt. Bill Abbott and Detective Harvey Jackson. On page 4, of that statement

Q: Was this a double barrel or a single barrel?

A: I don't remember. I just remember it was shotgun, 12 gauge and it was sawed-off and it had black tape around the end, the handle part.

Britt Martindale testified at the preliminary examination November 24, 1987, on page 63 direct examination Britt Martindale was ask.

Q. What did the gun look like?

A. A shotgun.

Q. Do you know anything about shotguns?

A. A little, not much.

Q. Can you tell us what kind of a shotgun it was?

A. No, it was just ...

Q. Can you tell us how long it was?

A. It was sawed off.

Q. How do you know it was sawed off?

A. Because they don't make shotguns that short that I've seen.

Q. Can you remember did this shotgun have a wood part?

A. It had a handle that was black taped.

Page 64

Q. Can you remember anything else about the shotgun?

A. No.

The petitioner's privately retained counsel Ray Stoddard filed motions to suppress on January 22, 1988 one, property was seized pursuant to an alleged consent search of Ms. Gregersen.(R646) and on the shotgun being very prejudicial (R646) the shotgun seized fits a different description, because of the discrepancy of the description with the shotgun being introduced in the trial. This motion was never ruled on by the court, that the shotgun if introduced at the trial would be prejudicial.

Judge Sawaya gave a protective order that any witness be it defense, or prosecution concerning any alleged other bad acts by any

witness would not be admissible this denied the petitioner the right in a jury trial for the jury to weigh the evidence and to determine the credibility of the witnesses. The trial court denied petitioner due process of law by refusing to allow him to present relevant, admissible evidence that another person committed the crime. A defendant in a criminal trial has the right, "to seek out the truth in the process of defending himself." Davis v. Alaska 415 U.S. 308,320; 94 S.Ct. 1105; 39 L.E.d.2d 347 (1974), "Few rights are more fundamental than that of an accused to present witnesses in his own defense." Chambers v. Mississippi, 410 U.S. 284,302 93 S. CT 1038; 35 L.E.D. 2nd 297 (1973). On September 4th, 1987, Sounds Easy Video was robbed at gun point. Helen Lamoreaux was the victim. On November 9, 1987, RO showed Helen Lamoreaux a photo lineup. Lamoreaux picked out a photograph of John E Humphrey, and stated that she was absolutely sure that Humphrey was the person who robbed her at gun point at her place of employment. The police report of Officer Tausinga appears in ^{APP.} v B-1, the supplementary report of officer Ertel appears in appendix B-2 on November 11, 1987, Russell Martindale gave a recorded statement to Detective Harvey Jackson in that statement Russell Martindale was ask on page twenty one.

Det. H. Jackson Q: So Russ if I understand you right your telling me that all the times that you went out on the

road, that you never did commit a crime?

Russell Martindale A: No.

Det. H. Jackson Q: Not a robbery? Not a burglary?

Russell Martindale A: No.

On page twenty-four of the statement of Russell Martindale November 11, 1987.

Det. H. Jackson Q: OK Russ let me just go over some of these cities that are on your phone bills OK. A september 17th, it looks like you called Britt From, Medford, Oregon. Ok, a did you do anything in Medford?

Russell Martindale A: No sir.

Page twenty eight of Russell Martindale's statement November 11, 1987.

Det. H. Jackson Q: Russ did Renee ever go on the road with Chuck?

Russell Martindale A: Not that I know of.

Det. H. Jackson Q: Ok Russ have you been honest with me, totally honest?

Russell Martindale A: ABSOLUTELY.

On November 12, 1987, Britt Martindale gave a taped statement to police at her home (see also Amy Blanchard affidavit in the appendix C to this petition).

A phone call recorded on November 13, 1987, between Detective

Harvey Jackson and Russ Martindale. On page one of the recorded call.

Det. H. Jackson Q: Ok so from what I understand in speaking with Britt and your dad, a we need to discuss what Twin Falls and Pittsburgh?

Russ Martindale A: Yea

Page two of the recorded phone call between Detective Harvey Jackson and Russ Martindale.

Russ Martindale A: And Awe came right back and we stopped in Salt Lake and picked up Renee.

Det. H. Jackson Q: A huh.

Russ Martindale A: Drove up to Renee's mom and dads.

Russ Martindale A: Ok, so I went and got a car.

Det. H. Jackson Q: Do you remember where you got that car from?

Russ Martindale A: It was from a little car place in Burley.

The nine page November 13, 1987, recorded phone call, between Detective Harvey Jackson and Russ Martindale appears in^{App.} D. attached to this petition.

Russ Martindale told Detective Jackson now after Detective Jackson made a tape statement of of Britt Martindale at her home November 12, 1987, now in a recorded phone call of Russ Martindale

on November 13, 1987, Russ Martindale told Detective Jackson that he went to Twin Falls, Idaho and he was with Chuck, Renee, and the baby and Russ said that he stole a car in Burley Idaho and went to Twin Falls Jewelry Store and he grabbed a box off the back counter and run out with it, got in the car he stole and drove to K-Mart got in the car with Chuck, Renee, and baby and came back to Utah.

Russ Martindale also told Detective Jackson that he did a aggravated robbery in Pittsburgh Pennsylvania, that he went in the Ungers Jewelers and grabbed a box in the safe and ran out, went to a parking terrace and climb in the trunk of Chuck's car. Russ Martindale was ask by Detective Jackson if Russ showed the clerk the gun, Russ told Detective Jackson all he did was just patted his stomach. The police report from Pittsburgh states that a red bag was used in this robbery and that the gun was displayed and also a worker ran after the robber and again the gun was displayed again to the worker. Russ Martindale told Detective Jackson that Charles Webb only gave him \$500.00 from this robbery to pay his rent for September.

Russ Martindale now tells Detective Jackson that he did a burglary in Medford, Oregon after the robbery in Salt Lake City, October 21, 1987. But only after Detective Jackson talked with Russ Martindale's wife at her home November 12,

1987.

Russell Martindale was asked again by Detective Harvey Jackson on page seven of the November 13, 1987 recorded phone call statement.

Det. H Jackson Q: Are we honest on everything now Russ?

Russ Martindale A: Yea.

Det. H.Jackson Q: We're positive huh?

Russ Martindale A: Yea.

On January 8, 1988, the court ordered a discovery, that order was (R.632). For the prosecution to provide anything that is in the law enforcement file. And for two of the prosecution witnesses (R634) No. 5 and 6, Britt and Russell Martindale's addresses and phone numbers. That defense counsel may be able to investigate and ask them questions.

(1) Prosecution, did not provide defense counsel aa copy of the statement that Russell Martindale gave Detective Harvey Jackson on or before November the 3rd, 1987, that Detective Harvey Jackson used in the probable cause statement, that was used for the arrest of the petitioner. See the arrest warrant and probable cause statement in appendix E.

(2) Prosecution, did not provide defense counsel a copy of the statement that Britt Martindale gave Detective Harvey Jackson when she personally contacted him on October 26, 1987.

See the affidavit for search warrant of Larry Johnson a detective with the City of Medford state of Oregon in appendix F, page 2.

(3) Prosecution did not provide defense counsel a copy of the statement that ~~both~~ Britt Martindale gave to law enforcement officers at her home at 438 East Wasatch Street on November 12, 1987, See Amy Blanchard affidavit of October 31, 1988, in appendix C.

(4) Prosecution did not provide defense counsel a copy of the recorded phone calls between the petitioner Charles Webb and Britt Martindale at her home at 438 East Wasatch after the petitioner Charles Webb was already in jail. See Amy Blanchard affidavit in appendix C.

(5) Petitioner Charles Webb was denied due process by failure of the prosecution to reveal that Russell Martindale had made a standing offer of a plea bargain with the states of Oregon, and Idaho, for his testimony in the Utah robbery case, and in any hearing or trial regarding any offenses known by Russell Martindale to have been committed by John Humphrey, or petitioner Charles Webb. *OR HIMSELF UPON REQUEST OF ANY DEPUTY COUNTY ATT. ASSIGNED TO PROSECUTE ANY CASE AGAINST JOHN HUMPHREY OR PETITIONER CHARLES WEBB.*

(6) Petitioner Charles Webb was denied due process, and a fair trial, when the prosecution kept from the court, the order of the preliminary hearing Judge that order by the the

Honorable Judge Grant, was (P.tape 87-2413 side B)

Judge Grant: Lets make it easy. I'll tell you and if you have any indication in this crime what so ever it's a legal individual it would be in your best interest to invoke your 5th amendment rights because you have not be charged in this crime and if you admit on this stand any implication of this crime what so ever, the court will have no other choice but to instruct the county attorney to follow action. You going to follow my advice?

Russell Martindale: Yes sir.

Judge Grant: I think that's the only fair thing we can^{do} with with this gentleman then at some future date, he becomes a witness, then we have to deal with that. Can't imagine any other attorney advising him any other way under those circumstances. And certainly I can't imagine him wanting to know anything other involvement with these two gentlemen. So I will take it upon myself to solve the problem I don't think there's any other way out.

In Herring v. New York, 422 U.S. 853, 95 S.Ct. 2550, 45 L.E.D.2d 593 (1975). The Supreme Court stated that a closing argument is a "basic element of the adversary fact finding process in a criminal trial". The Court held unconstitutional, as a violation of the sixth amendment right to assistance of counsel, a state statute that granted judges in non jury trials the discretion to deny closing argument. *Id.*, AT 863-64. The court noted the affect of a closing argument, as follows:

"{I}t is only after all the evidence is in that counsel for the parties are in a position to present their respective versions of the case as a whole. Only then can they argue the inferences to be drawn from all the testimony, and point out the weaknesses of their adversaries' positions. And for the defense, closing argument is the last clear chance to persuade the trier of fact that there may be reasonable doubt of the defendant's guilt...*Id.*, at 862.

The trial judge has wide discretion to control the duration and scope of a closing argument by setting time limits, terminating redundant arguments, and preventing the argument from straying from its purpose. *Id.* See also United States v. Carter, 760 F.2d 1568, 1581 (11th Cir. 1985); United States v. Lamare, 711 F.2d 3 (1st Cir. 1983); United States v. Davila, 693 f. 2d 1006 (10th Cir. 1982)

The prosecution must present its closing argument first. After defense counsel present his closing argument, the prosecution

may present a rebuttal argument. In a closing argument, both parties can argue the evidence and reasonable inferences from the evidence, but they cannot remark on matters outside the trial record. See United States v. Prantil, 764 F.2d 548, 555 (9th Cir. 1985); Whittington v. Estelle, 704 F.2d 1418, 1423 (5th Cir). cert denied, 464 U.S. 983 (1983); United States v. Ashfield, 735 F.2d 101, 112 (3d Cir). Cert. denied, 105 S.Ct. 189 (1984)(so called "rhetorical statement" are usually permissible during closing argument). Neither party may express personal opinions or state facts not in evidence. See United States v. Prantil, Supra; United States v. Risi, 603 F.2d 1193 (5th Cir. 1979); United States v. Netz, 758 F.2d 1308 (8th Cir. 1985). Nor may the parties misstate the law. See United States v. Samad, 754 F.2d 1091, 1100 (4th Cir 1984).

Petitioner, Charles Webb was denied the effective assistance of counsel, when his court appointed attorney, would not push the motion to sever defendant Webb, from Humphrey, or would she push the motion to suppress the shotgun, petitioner, Charles Webb points to his court appointed attorney for failure to make any attempt to suppress the statements of Russell Martindale, and Britt Martindale under Utah Rules of Evidence Rule 613 (b) or would his court appointed attorney file a Motion for pre-trial determination of the admissibility of co-defendants statements. Petitioner, believes that by the order of the lower court, the admissibility of all co-

defendants statements that many, if not all, will be inadmissible and, therefore, pre-trial exclusion will avoid prejudicial evidence being put before the jury.

Petitioner, Charles Webb was denied a fair trial by his court appointed attorney's unprofessional errors, in keeping from the court a true and accurate transcript of the preliminary hearing when Russell Martindale took the stand. Petitioner's court appointed attorney led the court to believe that all that was said when Russell Martindale took the stand was Russell Martindale taking the 5th Amendment, petitioner, court appointed attorney gave the court a one, page transcript and told the court that was all that was said. The one page transcript appears in ^{App.} G.

Petitioner, Charles Webb was denied due process by the failure of his court appointed attorney to bring to the court's attention that the Honorable Judge Grant brought to the courts attention and to the attention of the Salt Lake Legal Defender Assoc. of the conflict. See (Tape # 87-2413)

"The Honorable Judge Grant. It appears to me that with these two defendants you have a significant conflict, then to add in the fact that Miss Harold is representing Gregersen, that the Legal Defenders could even deal with it.

The petitioner Charles Webb ask this Honorable Court to order from the Lower Court the preliminary hearing tapes #87-2413 and #87-2414 in support of this petitioner.

The evidence seized at the home of the petitioner was in violation of the Fourth Amendment to the United States Constitution.

The trial court erred in denying the re-newed motion to suppress evidence. When Carolyn Renee Gregersen said she did not sign the permission to search agreement (R-40) the permission to search agreement appears in appendix H. To support that Carolyn Renee Gregersen did not sign the permission to search agreement, Carolyn Renee Gregersen brought in Linda J Knight, an experts witness who gave testimony May 20, 1988, at the proceedings before the Honorable Judge James S Sawaya (R29).

Q (By Ms. Wells): Ms. Knight, as a result of the method which you utilized and the comparative study that you made of the known sample of Ms. Gregersen's handwriting as compared to the questioned document, do you have an opinion as to whether or not they are of common authorship?

Mr. Cope: Objection, irrelevant.

The court: The question is whether the questioned signature is genuine.

Ms. Wells: I think she is ...

Mr. Cope: We don't think this witness is qualified to render this opinion. We don't dispute she has an opinion. We don't think it is relevant.

The Court: On the basis of her lack of expertise?

Mr. Cope: That is correct.

The Court: I will let her answer.

Ms. Wells: What is your answer?

Ms. Knight: My opinion is that Carolyn Gregersen did not sign the consent to search form.

The February 16, 1988, opinion of Linda J. Knight Certified
Graphoanalyst appears in ^{APPENDIX} I.

The Deputy County Attorney, James M Cope, offered no expert witness to rebuttal the testimony of the expert witness Linda J Knight's opinion.

The court denied the motion on May 23, 1988 without citing any authority.

The May 23, 1988 denial by the court appears in appendix J.

The firearm enhancement pursuant to U.C.A. 76-3-203 (1) does not apply to the petitioner's conviction for aggravated robbery.

The sentence is so disproportionate to his crime that it violated his eighth amendment right to be free from cruel and unusual punishment.

ARGUMENT

1. THE TRIAL COURT DENIED PETITIONER DUE PROCESS AND THE RIGHT TO PRESENT A DEFENSE TO CRIMINAL CHARGES WHEN THE TRIAL JUDGE EXCLUDED RELEVANT, ADMISSIBLE EVIDENCE WHEN THE JUDGE GAVE A PROTECTIVE ORDER THAT ANY WITNESS BE IT DEFENSE OR PROSECUTION CONCERNING ANY ALLEGED OTHER BAD ACTS BY ANY WITNESS.

In any criminal case the defendant has a due process right to introduce evidence that the actions the prosecution claims were committed by him were in fact committed by another person. Chambers v. Mississippi, 410 U.S. 284, 302, 93 S. CT 1038; 35 L.Ed/2d 297 (1973). Supra; Pettijohn v. Hall, 599 F.2d 476 (1st Cir.1979); Hill v. Rose, 579 F.Supp. 1080 (M.O. Tenn. 1983); U.S. Const, Amend. XIV.

U.S. Const Amend. VI the sixth amendment provides in part that "[i]n all criminal prosecutions, the accused shall enjoy the right...to be confronted with witnesses against him."Id. This right is extended to state prosecutions through the due process clause of the Fourteenth Amendment. Pointer v. Texas, 380 U.S. 400, 403 (1965).

The Sixth amendment right to confront one's accusers is a

right which may be invoked only by the criminal defendant. See United States v. Raffoul, 826 F.2d 218,222, (3rd Cir 1987).

Utah Code 77-35-4 Rule 4-(J) Prosecution of public offenses.

(J) The names of witnesses on whose evidence an indictment or information was based shall be endorsed thereon before it is filed. Failure to endorse shall not affect the validity but endorsement shall be ordered by the court on application of the defendant. Upon request the prosecuting attorney shall, except upon a showing of good cause, furnish the names of other witnesses he proposes to call whose names are not so~~ly~~ endorsed.

Russell Martindale and Britt Martindale are the state's witnesses, on their evidence an indictment or information was based against petitioner, Charles Webb, for his arrest. (See the Arrest Warrant and probable cause statement, in^{APPENDIX} E)

The petitioner was prejudiced when the trial judge gave a protective order that any witness be it defense or prosecution concerning any alleged other bad acts by any witness would not be allowed.

It is the exclusive function of the jury to weight the evidence and to determine the credibility of the witnesses; Booker,

709 P.2d at 345; State v Tolman, 775 P.2d 422, 424 (Utah Ct. App.), Cert. Denied, 120 Utah Adv. Rep. 44 (1989).

If, However, the defendant exercises the right to cross-examination, he or she must be permitted to test both the credibility of the witness, Davis v Alaska, 415 U.S. 308, 316-17 (1974); Compare Clark v O'Leary, 852 F.2d 999, 1005-1008 (7th Cir. 1988) (confrontation clause violated when defendant not permitted to question key witness regarding bias and prejudice against defendant resulting from witness' membership in rival street gang); and United States v Jones, 766 F.2d 412, 414-415 (9th Cir 1985) and the witness' knowledge of the facts bearing on the defendant's guilt or innocence. See United State v Pritchett, 699 F.2d 317, 321 (6th Cir. 1983) (confrontation clause violated by limiting cross-examination about source of drugs when line of questioning likely to affect jury's acceptance of defendant's defense). This term, in Olden v Kentucky, 109 S.Ct. 480 (1988). The Supreme Court reaffirmed a defendant's right to inquire into any matter which may throw doubt on a witness' credibility, Id. at 484, in reversing the rape conviction of a defendant who was prevented from using cross-examination to impeach the complaining witnesses' testimony concerning the witnesses' living arrangements. The Olden court found that the trial judge's restrictions were "a limitation beyond reason, Id. at 483.

In this case before the court the jury could not determine the credibility of the witness Russell Martindale, and Britt Martindale, when the evidence was kept from the jury by the protective order by the Honorable James S. Sawaya, Judge of the Third Judicial District Court, Salt Lake County, State of Utah.

Petitioner, at trial could not bring out on cross-examination that witness, Russell Martindale told Detective Harvey Jackson in his November 11, 1987 statement (page 12);

(Q) OK, now what happened when you got back to Salt Lake.

(A) OK, uh, Humphrey and Chuck went and did what ever and he approached me with, uh,,, well, I'll, I'll let you go for a couple of hundred dollars that you owe me if you'll go get this car for me.

Russell Martindale testified at trial (T.408);

(A) Mr. Webb told me that he would pay my rent on my house if I did no~~s~~ thing for him, and that was to go down and test drive a car and take it back and then go back the next day and take i~~f~~ for another test drive, then give him the keys.

The protective order by the Court stopped the petitioner from bringing out to the jury that Russell Martindale, on November 13, 1987, gave Detective Harvey Jackson a statement on page 5, of that

statement Russell Martindale told Detective Harvey Jackson that he did a robbery at Ungers Jewelers in Pittsburgh, Pennsylvania, (page 6) of his November 13 statement. (See ^{APPENDIX} D, page 5 and 6)

(Q) Did you get any of that money Russ?

(a) He gave me five hundred dollars to pay my rent for September.

Britt Martindale gave a statement to Detective Harvey Jackson, November 3, 1987, and she was asked if she knew of any robberies that Mr. Webb has been involved in. (Page 15)

(A) I know he was back east, but I don't know ... I know there was a robbery done back there, but I don't know where, or nothin.

(Q) Do you know about what time.

--(Page 16)

(A) It was about two months ago.

(Q) did he ever mention what they got in the robbery.

(A) He said he got, I think he said he got about six thousand dollars worth.

(Q) Of what.

(A) A, I think he said diamonds.

Britt Martindale gave a statement to Detective Harvey Jackson, November 3, 1987, page 13 of that statement;

(Q) Did Russ receive anything from Chuck for getting

that car. Was he paid anything.

(A) Shook head no.

Russell Martindale, on November 11, 1987, on page 4, he was asked;

(Q) OK, where did you go to, Russ?

(A) He, he says I have this place up in North Dakota, OK. and I says, OK, and, he, he didn't tell me anything about till we got there. and uh, we go up there and...

(Q) Which city were you in?

(A) He had Humphrey with him. We went to North Dakota.

Britt Martindale, on November 12, 1987, gave a statement at her home to the police (T.256). After her statement, November 12, 1987, Detective Harvey Jackson called Russ Martindale, November 13, and Russ Martindale gave Detective Harvey Jackson a statement over the phone, but only after his wife, Britt Martindale gave a statement to the police at her home on November 12, 1987. Now Russ Martindale tells Detective Jackson that the first time that he left with Mr. Webb, was with Mr. Webb, Renee Gregersen and their son, and Humphrey was not with them, and we went to Twin Falls, Idaho, and did a theft at a jewelry store in Twin Falls. Russ Martindale also told Detective Jackson that he did a robbery at Ungers Jewelers in Pittsburgh, Pennsylvania, and he also told Detective

Jackson that he did a burglary in Medford, Oregon.

It has long been settled in the law that the knowing use by the prosecution of false evidence material to the issues in a criminal trial constitutes a denial of due process and that a conviction obtained by the use of such evidence cannot be permitted to stand; Mooney v Holohan, 294 U.S. 103; 55 S.Ct. 340; 79 L.Ed. 791 (1935); Napue v Illinois, 360 U.S. 264; 79 S.Ct. 1173; 3 L.Ed.2d. 1217 (1959); Giglio v United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d. 104 (1972). The same result obtains when the state, although, not soliciting false evidence, silently but knowingly allows it to go uncorrected when it appears. Alcorta v Texas, 355 U.S. 28; 78 S.Ct. 103; 2 L.Ed.2d. 9 (1957); Napue v Illinois, Supra. That the falsity within the evidence may bear only upon the credibility of the witness, rather than upon the guilt of the accused, is not sufficient to render it immaterial. Brady v Maryland, 373 U.S. 83; 83 S.Ct. 1194; 10 L.Ed.2d. 215 (1963); Napue v Illinois, Supra. These rules are well summarized in the case of Giglio v United States, Supra. Wherein the court stated:

"As long ago as Mooney v Holohan, ... the court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with 'rudimentary demands of justice'. This was reaffirmed in Pyle v Kansas, 317 U.S. 213; 63 S.Ct. 177; 87 L.Ed. 214, ... In Napue v Illinois... the court said "the same result obtains when the state, although not soliciting false evidence, allows it to go uncorrected

when it appears"... Thereafter, Brady v Maryland,... held that suppression of material evidence justifies a new trial 'irrespective of the good faith or bad faith of the prosecution'. *When the 'reliability of a given witness* may well be determinative of guilt or innocence; non disclosure of evidence affecting credibility falls within this general rule ... a new trial is required if 'the false testimony could ... in any reasonable likelihood have affected the judgment of the jury."

"The failure of the prosecution to disclose to the defense and to the trial jury the existence of plea bargaining negotiations with the witness, Russell Martindale deprived the petitioner of the Fifth Amendment due process of law." (Emphasis Added)

The rules announced in Giglio v United States, Supra, and cases therein cited, are not limited in their application only to witnesses called by the prosecution. The prosecution may not sit silently by and be relieved of the duty of correcting a known falsehood simply because the witness testifying was not called by it to testify. This is particularly so where the state itself enabled the falsehood to arise by its own undisclosed plea bargaining activities.

Furthermore, it should not be overlooked that the witness, Russell Martindale, at the preliminary hearing before the Honorable Judge Grant, the court gave an order to the County Attorney (P. Tape 87-2413 side B)

Judge Grant, let's make it easy, I'll tell you and if you have any indication in this crime what so ever it's a legal individual, it would be in your best interest to

invoke your Fifth Amendment Rights because you have not been charged in this crime and if you admit on this stand any implication of the crime whatsoever, the court will have no other choice but to instruct the County Attorney to follow action.

The trial court erred in not calling for a mis-trial when Russell Martindale's testimony he gave to the jury involved him in this robbery. More than just the theft of a motor vehicle, in closing argument the prosecution prejudiced the petitioner by not following action on the witness, Russell Martindale, the prosecution violated the lower court's order (P.Tape 87-2413), when the prosecution put the witness, Russell Martindale as a co-defendant in his closing argument. (T.615)

When you have the eyewitnesses saying yes, that's who it was, when you have a third party saying these people participated in a robbery, That my husband helped to stage.

(T.616) What difference does it make? Mr. Webb, Mr. Humphrey, Mr. Martindale, were all down there in Las Vegas getting rid of the stolen property. That's what they were doing. .

(T.616) He was angry and upset. He came back and found out that they used his kitchen table to divide up the

loot. He thought that the boss of the operation should have taken it to his house.

(T.617) Namely, Martindale, didn't have contact or come back without them knowing about it because they are all in big trouble if he decides he wants to start talking about what he's been doing with them in Las Vegas and in Salt Lake City during the latter part of October, 1987.

(T.621) Mr. Webb is with Mr. Humphrey in Salt Lake doing a robbery. Mr. Martindale is dividing up the loot at Mr. Martindale's house, going someplace to get rid of it so they can continue on with taking care of business.

The trial court prejudiced the petitioner when the trial judge gave a protective order that any witness be it defence or prosecution concerning any alleged other bad acts by any witness would not be allowed. This prejudice the petitioner in that he could not bring out to the jury the credibility of the witness, Britt Martindale, and Russell Martindale. At the preliminary hearing, Britt Martindale was asked:

(Q) When was the first time you met Mr. Humphreys?

(A) I don't remember the first time I met him.

(Q) A, about how long before October 21st?

(A) I'm not sure.

(Q) A month.

*11

(A) I'm not sure.

(Q) Five years?

(A) No, it wouldn't be that long.

(Q) Several months?

(A) About a month maybe two.

(Q) OK, and he has been staying at your home?

(A) Yep.

Russell Martindale on November 11, 1987, gave a statement to Detective Harvey Jackson, on page 12 of that statement, Russell Martindale was asked:

(Q) Now where was Humphrey staying?

(A) With Chuck.

(Q) OK, was he ever staying with you and Britt?

(A) No.

The petitioner could not bring out to the jury that co-defendant, John Humphrey, was staying with Britt Martindale, and on September 4, 1987, Sounds Easy Video was robbed. Lamoreaux picked out a photograph of John Humphrey and stated that she was absolutely sure that Humphrey was the person who robbed her at gun point at her place of employment. (See ^{Appendix} B.2) The petitioner could not bring out to the jury that John Humphrey did not have a car, and Humphrey was staying with Britt Martindale, and that Britt Martindale just may have been John Humphrey's get-away driver, at

the Sounds Easy Video robbery.

Russell Martindale on November 11, 1987 gave a statement to Detective Jackson, and was asked by Detective Jackson: (Statement 11-11-87 page 4)

(Q) OK, where did you go to, Russ?

(A) He, he says I have this place up in North Dakota.

On November 12, 1987, Britt Martindale gave a statement at her home to police: (See Affidavit Amy Blanchard in ^{Appendix} C)

Now Detective Harvey Jackson calls Russell Martindale, and Russell Martindale now tells Detective Harvey Jackson that the first time that he went out on the road with the petitioner was to Twin Falls, Idaho not to North Dakota, as he told Detective Jackson in the first statement that he gave to Detective Harvey Jackson. Only after the police took a statement from Britt Martindale at her home, November 12, 1987, did Russell Martindale tell Detective Harvey Jackson that he went to Twin Falls, Idaho, and that he was with petitioner, Charles Webb and petitioner's girlfriend, Carolyn Renee Gregersen and his little son. Russell Martindale tells Detective Jackson, after his wife's statement to police on November 12, 1987 that he did a theft at Twin Falls jewelry store and that he stole a car in Burley, Idaho for the theft in Twin Falls, Idaho. Russell Martindale also tells Detective Harvey Jackson that he did an aggravated robbery at Ungers Jewelers in Pittsburgh,

Pennsylvania, and that he got in the trunk of petitioner's car, and he told Detective Jackson that petitioner only gave him five hundred dollars to pay his rent for September. (See ^{APPENDIX} D, page 5 and 6) Russell Martindale also did a burglary at John Nuich Jewelers in Medford, Oregon. (See ^{APPENDIX} D, page 7 and 8)

The protective order violated the petitioner's confrontation clause of the Sixth Amendment to the United States Constitution. Russell Martindale and Britt Martindale are the petitioner's accusers, not a defense witness. (See arrest warrant and probable cause statement in ^{APPENDIX} E)

The protective order by the trial judge prejudiced the petitioner, when the jury could not determine the credibility of the witness, Russell Martindale and Britt Martindale, when the evidence was excluded from the jury.

In closing argument (T.580) the prosecution told the court and jury:

Who has a reason? Who has the best and biggest reason for fabricating in this case? Well, the defense said, in their opening statement, they were going to show that Britt Martindale had a good reason to do it. Evidence doesn't show any reason for her to do that. Her husband is in enough trouble.

(T.580) The only people who have a motive to fabricate,

have a reason to fabricate, have time to fabricate, are these two gentlemen here, the gentleman in the red shirt and the gentleman in the white shirt. (Meaning the petitioner, Charles Webb in the red shirt and co-defendant, John Humphrey in the white shirt.)

In this case, the witness, Russell Martindale, had made a plea bargain with the State of Oregon for probation for the burglary of John Nuich Jewelers located at, 231 East Main Street, Medford, Jackson County, Oregon, for his testimony in any trial regarding any offenses known by him to have been committed by petitioner, or co-defendant, John Humphrey. The witness, Russell Martindale, also made a plea bargain with the State of Idaho, and the theft of Twin Falls jewelry store in Twin Falls, Idaho for his testimony. For The Theft of A Car in Burley, Idaho
Witness, Russell Martindale also made a plea bargain for the aggravated robbery at Ungers Jewelers in Pittsburgh, Pennsylvania for his testimony.

It was this witness and his wife, Britt Martindale who may have been impeached if it were made known to the jury that the States of Oregon, Idaho, and Pennsylvania had offered him a way to escape from a jury determination of guilt and punishment. As it was, the jury may in fact have given added weight to his testimony since he and the County Attorney, Deputy James M. Cope admitted his own involvement. If it had been made known to the jury that

Russell Martindale had nothing to lose by his testimony, and his wife, Britt Martindale had everything to gain, the jury might have afforded less weight to it than was the case. At any rate, the facts in this regard should not have been knowingly withheld from the jury by the prosecution. (See Ray v Rose, (1974, DC Tenn) 371 F.Supp 277.

**2. PETITIONER WAS DENIED DUE PROCESS
AND EQUAL PROTECTION OF THE LAWS BY
THE PROSECUTOR'S VIOLATION OF A
DISCOVERY ORDER INVOLVING
CONCEALMENT OF STATEMENTS OF THE
MAIN PROSECUTION WITNESS.**

At the Preliminary Proceedings November 24, 1987, Russell Martindale was called by the defense as his accuser.

(P.Tape 87-2413)

Judge Grant, Mr Martindale before you commence, there's been some indication in this hearing that one of counsel for defense seems to feel you were involved in the perpetration of this crime, and other crimes, so that you are fully advised do you understand that you have a right under the Constitution of the United States to remain silent in regards to any crimes that you may have committed.

(P. Tape 87-2413)

Judge Grant, I suppose the only thing that

bothers me as far as these defendant's are concerned their process is being delayed, anything that this witness bring in this hearing is going to turn into a question of fact. The question of probable cause may or may not be affected but if it turns into a question of fact it won't be affective.

Counsel for defense, Jim Bradshaw, I don't think that's something we can deal with until we hear the testimony.

Judge Grant, I'm certain as far as Mr Humphrey is concerned, this gentlemen has not been identified, because there was only one individual who went into the jewelry store and no matter what he says, as far as Mr Humphrey's concerned, now the conspiracy aspects for Mr Webb I can understand, but even at that rate he just may simply become a co-conspirator and quash the fact.

A defendant is entitled to the factual particulars to be presented to the jury, in all aspects of his case in aid of his defense. Article 1, Section 12, Utah Constitution (also relative to right to demand the nature and cause of the specific accusation

and all relevant material).

In State v. Watts, 675 P.2d 566 569 (Utah 1983) the court stated: "Circumstantial evidence alone may be competent to establish the guilt of the accused so long as it excludes every reasonable hypothesis, other than the defendant's guilt."

The petitioner, was prejudice at trial when the prosecutor, violated the lower court order and did not follow action on the witness Russell Martindale (P.Tape 87-2413). The witness Russell Martindale would have become a co-conspirator by the lower court order when he, and the Deputy County Attorney admitted his involvement in this crime at trial.

In Giglio v. United States, 405 U.S. 150 (1972). The Supreme Court applied Brady to a situation in which the prosecution withheld the fact that it had promised a key witness he would not be prosecuted for his part in a crime if he testified against his companion. Id. AT 155. The Court found that because the creditability of the witness was at issue, it was a violation of due process not to inform the jury of the "deal". Id.; se Napue v. Illinois 360 U.S. 264, 269 (1959) (due process required government to disclose both to defendant and to jury any promises of immunity or leniency offered to witness in exchange for testimony);

Petitioner, was denied due process and equal protection of the laws by the prosecutor's violation of the lower court order, to

follow action of the witness Russell Martindale, if he admitted any implication of this crime what so ever. The Honorable Judge Grant also ordered the County Attorney if Russell Martindale at some future date, he becomes a witness, then we have to deal with that (P. Tape 87-2413)

In closing argument the prosecutor told the jury (T.573)

Yes, it is true the grant of immunity was procured by the county attorney. Mr. Yocom is the only person in the county who can give such a grant. Why? Because he was subpoenaed by the defense and there's no point in having him take the stand and claim his fifth amendment privileges.

And kept from the jury the order of the lower Court Judge Grant, the petitioner, was prejudice by the prosecutor's violation of the lower court order, to follow action on the witness Russell Martindale, by the lower court order the witness Russell Martindale would have became a co-conspirator, and under Burton v. United States, 391 U.S. 123 (1968) the court in Burton held that the sixth amendments confrontation clause prohibits the introduction of a co-defendant's extrajudicial confession if it incriminates the defendant even when it is introduced only against the co-defendant. see: Brady v. Maryland, 373 U.S. 83 (1963). in which the Supreme

Court held that the government's failure to disclose evidence favorable to a defendant who specifically requested it violated the defendant's due process rights because the evidence was material to guilt or punishment. Id At 87.

At pre-trial motion (R.14) attorney for defense Ms Wells ask the court;

The second matter is that I understand that there was a statement which have not yet seen of a taped telephone conversation with the key witness Ms Martindale.

(R.16) Mr Webb: I would like to say something, there is one statement that was taken at her house on 11-12-87. I would like a copy, sir.

The petitioner, was prejudiced when the prosecutor would not disclose to the defense attorney the taped telephone conversation between the petitioner, and the key witness Ms Martindale when the petitioner, Charles Webb was in jail on the robbery charge, that taped telephone conversation would show to the jury, that the petitioner ask her why he was in jail, and that she knew that the petitioner was not involved in this robbery, and the key witness Ms Martindale told the petitioner, that she knew he wasn't involved in this robbery. Or words to that effect.

The petitioner was denied due process and equal protection of the laws when the prosecutor would not disclose to the defense attorney the taped statement of the key witness Britt Martindale, that she gave police at her home November 12, 1987, ^{APPENDIX} ~~see:~~ C. The affidavit of Amy Blanchard. Also see: the police handwritten interview with Britt Martindale at her home on November 12, 1987, ^{APPENDIX} in K.

The petitioner, was prejudiced when he could not bring out to the jury that the witness Britt Martindale on November 12, 1987, told police at her home November 12, 1987, that her husband Russell Martindale did a theft at Twin Falls Jewelers in Twin Falls, Idaho, the witness Britt Martindale also told police at her home November 12, 1987, that her husband Russell Martindale did a robbery back east and her husband Russell Martindale hid in the trunk of petitioner, car.

At the preliminary hearing November 19, 1987, just seven days after the witness Britt Martindale, gave a statement to police at her home November 12, 1987, the witness Britt Martindale, was called by the prosecutor to give testimony at the preliminary hearing, on cross-examination preliminary hearing page 79, and 80.

Page 79, A: Chuck had said, Russ has caused him money and put his so called wife and kids out being out on the road with him.

Page 80. Q: Russ owed Chuck some money?

A: He caused them to loose money.

Q: Did he elaborate, did he say why?

A: Because he didn't do this place, he didn't go burglarize that place.

Q: So your husband, Russ, was supposed to do a burglary?

A: And then some.

Q: Excuse me?

A: And then some.

Q: What do you mean and then some.

A: He was just mad because he had been put out because Russ didn't do anything.

In Brady v. Maryland, 373 U.S. 83 (19~~6~~3). The court found that the prosecutor's failure to disclose an accomplice's confession after the defendant had specifically requested any of his accomplice's statements, denied the defendant evidence material to the imposition of punishment and thus violated his fourteenth amendment right to due process. Id.

In this case before the court the prosecution sit silently by, while the key witness Britt Martindale gave perjured testimony to the court and kept from the petitioner, the statement that she gave to police at her home November 12, 1987, this statement would have impeached the witness Britt Martindale. A prosecutor's failure to produce all evidence favorable to the accused constitutes a due process violation even if the prosecutor acted in good faith. See U.S. v. Miranne, 688 F.2d 980, 988 (5th Cir 1982).

The petitioner, Charles Webb was denied due process and a fair trial when the prosecution kept from the petitioner, the statement that Russell Martindale gave Detective Harvey Jackson on or before November the 3rd, 1987, that Detective H Jackson used in the probable cause statement Brady, 373 U.S. AT 83,87 but see U.S. v. Miranne, 688 F2d 980, 988 (5th Cir 1982). (Brady warrants consideration of degree of government's negligence or bad faith when prosecution loses or destroys exculpatory material), cert. denied, 459 U.S. 1109 (1983). This statement would have impeached the key witness Britt Martindale, if it had been made known to the jury. The evidence in that statement was, material to the petitioner's guilt or punishment. Brady v. Maryland, 373 U.S. 83 (1963).

The petitioner, was denied due process and a fair trial when the prosecution did not provide the defense a copy of the statement

that Britt Martindale gave Detective Harvey Jackson when she personally contacted him on October 26, 1987. See: the affidavit for search warrant of Larry John a detective with the City of Medford, State of Oregon in F, ^{Appendix} page 2.

The statement that Britt Martindale gave detective Harvey Jackson would have impeached the key witness Britt Martindale and her husband Russell Martindale at trial, page 2, of appendix F.

Ms. Martindale informed detective Jackson that she had been told by her husband, Russell Martindale, that Russell Martindale was also involved. That Russell Martindale had advise Ms. Martindale that the subjects had made Russell Martindale steal a vehicle and that said vehicle was used by Humphrey's in the robbery of the Salt Lake jewelry store.

Britt Martindale on November 3, 1987, gave a statement to Detective Harvey Jackson, on page 3.

Q: So Chuck came up to Russ and said that he need Russ to get a car. Did he tell Russ what he was going to do with the car?

A: I don't know, I wasn't there.

At trial Britt Martindale gave testimony on cross-examination by Ms. Wells (T.252)

Q: You know now, don;t you Ms. Martindale, that you husband stole a car from car country?

A: Yes.

Q: All right, and you know that that car was stolen in order to facilitate the Trolley Square robbery; is that right?

A: No, I didn't know that.

At trial Russell Martindale gave testimony on redirect examination. (T. 413) by Ms. Wells.

Q: So you are saying, Mr. Martindale, today, that despite anything you may have said on the 11th it is true that when you stole the car you knew nothing that was going to happen at Trolley Square; right?

A: That is correct.

The statement that Britt Martindale gave detective Harvey Jackson when she personally contacted him on October 26, 1987, if it had been made know to the jury that Britt Martindale told detective Harvey Jackson that her husband Russell Martindale was also involved.

The jury might have afforded less weight to the credibility of the witness Britt Martindale. The facts in that statement should

not have been knowingly withheld from the defense, and the jury by the prosecution, see Mooney v. Holohan, 294 U.S. 103, 108, (1935)(due process violated when prosecutor who learned at trial that witness had committed perjury did not disclose this evidence to defence counsel).

At the preliminary examination November 24, 1987, Britt Martindale testified on cross examination (P.T> 76)

Q: When did you fir contact the police?

A: I didn't.

Q: You never did?

A: My father-in-law did.

The Supreme Court fashioned a three tier standard under which the degree of materiality of the withheld evidence required to overturn a conviction ^{der}un~~der~~Brady varies with the specificity of the defendant's disclosure request. Id. AT 104, 107. First, when a prosecutor knows or should know that the government's case contains perjured testimony, a court should reverse for nondisclosure if there is "Any reasonable likelihood that the false testimony could have affected the jury's judgment." Id. AT 103-04. Second, if the defendant makes a request for specific Brady material and government fails to disclose it, a court should reverse whenever there is reason to believe that the nondisclosure "might have affected the outcome of the trial" Id. AT 104. Third, when a

defendant has made only a general Brady request, or no Brady request at all, a court may reverse only if the undisclosed evidence would create "a reasonable doubt that did not otherwise exist." Id. AT 112. In United States v. Agurs 427 U.S. 97 (1976). the Agurs court thus recognized that evidence may be so clearly exculpatory that due process requires its disclosure even when the defense fails to make a Brady request Id. AT 110-11.

The only evidence linking the petitioner to this robbery, are the statements of the key witness Britt Martindale and her husband Russell Martindale and for the prosecutor's failure to disclose evidence that is material to guilt or punishment. Violated due process because the credibility of the witness was at issue. Compare United States v. Burroughs, 830 F.2d 1574, 1579 (11th Cir. 1987).

**3. PETITIONER WAS DENIED DUE PROCESS
AND A FAIR TRIAL WHEN THE
PROSECUTION EXPRESSED PERSONAL
OPINIONS AND STATED FACTS NOT IN
EVIDENCE IN HIS CLOSING ARGUMENT.**

The prosecutor's role in the criminal justice system is not to strive for a victory in an adversarial contest, but to seek justice.

Justice Sutherland's advice in Berger v. U.S. 295 U.S. 78 (1935), although specifically directed to United States Attorneys, is instructive to all prosecutors:

The U.S. Attorney is the representative not of an ordinary party to controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution, is not that it shall win a case, but that justice shall be done. As such he is ... the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor--indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

Id. AT 88. See also Model Rules of Professional Conduct Rule 3.8 (1983)(special responsibilities of prosecutor in criminal case); Model Code of Professional Responsibility DR 7-103 (1980)(duties of public prosecutor or other government lawyer); Model Code of Professional Responsibility EC 7-13

(1980)(responsibility of public prosecutor to seek justice, not merely to convict).

When a prosecutors conduct deprive the defendant of a fair trial, due process is violated. See Berger v. U.S. 295 U.S. 78, 88,89(1935)(New trial required when prosecutor misstated facts, put words into witnesses' mouths, spoke as if he had person knowledge, assume prejudicial facts not in evidence, bullied witness, and conducted self in "thoroughly indecorous and improper manner").

In this case before the court the petitioner, was denied due process and a fair trial when the prosecution expressed personal opinions and stated facts not in evidence in his closing argument. Under Utah law, Utah Rules of Evidence Rule 602. Lack of personal knowledge.

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Britt Martindale, called as a witness, at the instance of the state, on cross-examination by Ms. Remal: (T.285)

Ms. Remal: Q: Now Mrs. Martindale, you indicated earlier this morning when you were testifying you hadn't heard any conversation about a robbery be in planned for the 21st or any other date at Trolley Square; is that correct?

A: Not at Trolley Square.

Q: You hadn't heard anything about this particular robbery?

A: No.

On cross-examination by Ms. Wells Britt Martindale was asked.
(T.252)

Q: That was the car that was stolen in order to facilitate this robbery correct?

A: I don't know what the car looked like. I couldn't tell you.

Britt Martindale had no personal knowledge by her own testimony of the robbery at King's Custom Jewelers at Trolley Square or by her own testimony did she know that a car was stolen in order to facilitate this robbery.

In closing argument, the prosecution stated facts not in evidence (T.615)

When you have the eyewitness saying yes,

that's who it was, when you have a third party saying these people participated in a robbery that my husband helped to stage.

A prosecutor may not make material misstatements of fact and must confine his opening statement and closing argument⁶ to admissible evidence on the record and to permissible inferences from that evidence. See United States v. Peterson, 808 F. 2d 969~~4~~, 977 (2d Cir. 1987)(prosecutor's closing statements characterizing witness' testimony as lies permissible when shown at trial that assertion tied to statements in record and plainly directed to credibility of witness);

There is no evidence in the record that the petitioner Charles Webb participated in this robbery at King's Custom Jewelers at Trolley Square. There is no evidence in the record that the car Russell Martindale was give immunity for was used in the robbery at King's Custom Jewelers. The only statement ~~that~~^{that} involved the petitioner in this robbery, was the prosecutor in closing argument (T621)

The only logical way that, your common sense will allow you to put evidence together shows clearly the guilt of both these men, the gunman and the wheelman.

The prosecutor offered know evidence to the jury, but his own

testimony that the petitioner Charles Webb was the wheelman, the states own witness Britt Martindale gave a statement to detective Harvey Jackson see appendix F. page 2.

Russell Martindale steal a vehicle and that, said vehicle was used by Humphrey's in the robbery of the Salt Lake City jewelry store.

On November 11, 1987, Russell Martindale gave a statement to Detective Harvey Jackson on page 15 of that statement,

A: The store. And uh, Humphrey was hiding, told me he was hiding behind the door and when the security guard came in, he just stepped out behind him and took his handcuffs and put them on him.

Q: OK. Did he tell you how he got away?

A: He told me he uh, he then went through some construction and, and got in this car that I got him and went and parked it somewhere and climbed in the truck of the Cadillac.

Q: He told you that he got in into the car that you had got from Car Country?

A: Yeah.

The petitioner Charles Webb was charged and convicted of

aggravated robbery Utah Code 76-6-302(1978).

1. A person commits aggravated robbery if in the course of committing robbery he:

A. Uses a firearm or a facsimile of a firearm knife or a facsimile of a knife or a deadly weapon; or

B. Causes serious bodily injury upon another.

2. Aggravated robbery is a felony of the first degree.

3. For the purposes of this part an act shall be deemed to be "in the course of committing a robbery" if it occurs in an attempt to commit, during the commission of or in the immediate, flight after the attempt or commission of a robbery.

The witness Britt Martindale stated she in no way participated in the criminal activity or its planning or did she hear anyone planning the robbery at Kings Custom Jewelers located at Trolley Square in Salt Lake City, Utah. Russell Martindale states that he did not know anything about this robbery at Trolley Square, in Salt Lake City, Utah.

There is no evidence in the record that the petitioner Charles Webb participated in this robbery or its planning. There is no

evidence in the record that the petitioner participated during the commission of or in the immediate flight after the attempt or commission of a robbery.

The elements do not meet the charge of aggravated robbery the petitioner was charged with.

The Supreme Court held in In Re Winship 397 U.S. 358 (1970) that the due process clause the Fourteenth amendment provides that no state shall "deprive any person on life, liberty, or property, without due process of law." U.S. Const. Amend. XIV; see U.S. Const Amend. V. requires the government to prove every element of the crime with which a defendant is charged beyond a reasonable doubt. If the government fails to sustain its burden of proof on any element, the defendant must be acquitted. See Winship 397 U.S. AT 364; See U.S. v Perico, 832 F.2d 705,714 (2d Cir 1987). U.S. ex rel. Hickey v. Jeffes 571 F 2d 762,764,(3rd Cir 1978) U.S. v. McIntre, 836 F.2d 467,471-472(10th Cir 1987). The defendant must also be acquitted when the court fails to instruct the jury on any element that the prosecution is required to prove beyond a reasonable doubt. See U.S. v. Johnson, 718 F.2d 1317, 1323, 1325 (5th Cir. 1983). U.S. v. Mentz, 840 F.2d 315,319,324 (6th Cir 1988). U.S. v. Washington, 819 F.2d 221,226,(9th Cir. 1987). See Speiser v. Randall, 357 U.S. 513, 523, (1958)(State or federal government's definition of offense unconstitutional under due

process clause if "it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental")

Material misstatement of fact also constitute prosecutorial misconduct. See U.S. v. Santana-Camacho, 833 F.2d 371 (1st Cir. 1987) (prosecutor's incorrect statement that evidence demonstrates defendant illegally entered country constituted plain error and mandated reversal when prosecutor was Assistant United States Attorney; illegal immigration information is official information he presumed to know).

In this case before the court, the petitioner was prejudice by the prosecution at trial when the prosecution gave the witness Russell Martindale the anonymous letter, so that he could use it in his testimony. The anonymous letter appears in appendix L. On November 11, 1987, the witness Russell Martindale gave Detective H Jackson a statement of page 12 of that statement.

A: Um, the first, the only thing he said to me was I, I'm gonna let you off for some of the money you owe me if you go get this car for me, ok. So I says ok, uh, I guess I'll do it. And he says ok, I got this car lot in West Valley.

Q: Uh hum.

A: And all you have to do is walk up there and ask the man to test drive it. So that's what I did. I test drove the car and, and he said, now if you get the car, meet me over here at McDonalds and give me the keys and ride the bus home and that's what I did.

Now after the prosecutor gave the witness Russell Martindale a copy of the anonymous letter, Russell Martindale gave testimony at trial (T. 408)

Mr Webb told me that he would pay my rent on my house if I did one thing for him, and that was to go and test drive a car and take it back then go back the next day and take it for another test drive, then give him the keys.

See U.S. v Valentine, 820 F. 2d 565, 570 (2d Cir 1987) U.S. v. Kaufman, 803 F.2d 289,291-292(7th Cir. 1986). U.S. v. Foster, 874 F.2d 491, 494-95 (8th Cir 1988). Brown v. Wainwright, 785 F.2d 1457, 1464-66 (11th Cir. 1986)(habeas relief granted when witness' false testimony material to outcome and government knew testimony false.

The petitioner, was prejudice by the prosecution in closing argument when the prosecution stated facts not in evidence, the prosecution denied the petitioner, due process and a fair trial

when the prosecution in closing argument used the witness Russell Martindale as a co-defendant, and by doing so violated the lower court order to follow action on the witness Russell Martindale if he had any implication of this crime what so ever. (P.tape 87-2413 side B) The statement the prosecution gave in closing argument is included in appendix M.

In closing argument (T.616) The prosecution stated facts not in evidence.

What difference does it make? Mr Webb, Mr Humphrey, Mr Martindale, were all down there in Las Vegas getting rid of the stolen property. That's what they were doing.

There is no evidence in the record that the petitioner Charles Webb, or Mr Humphrey sold anything in Las Vegas that came from this robbery. The only evidence to the jury was the prosecution personal opinion. See United States v. Prantil supra; United States v. Risi 603 F.2d 1193 (5th Cir. 1979); United States v. Netz, 758 F.2d 1308 (8th Cir. 1985).

At the preliminary examination December 10, 1987, Case Number CR87-1572 Re: State of Utah v. Carolyn R. Gregerson, witness Britt Martindale gave testimony.

Q: You had not reported to the welfare before that he was not living there?

A: He was there for two day's and I had

talked to my worker.

Q: So he was there for two days before this took place.

A: Yeah.

Q: And he had been gone for a period before that?

A: Yeah.

In closing argument the prosecution knew that Russell Martindale was not with his wife Britt Martindale from the 13th to the 21st of October 1987. The statement the prosecution gave the jury (T.571)

The state suggests that the circumstances and the testimony of Mr Martindale and Mrs Martindale show there are no phone calls between the 13th of October and 26th or 27th of October, because he was in town. He was in town conducting some business with Mr Martindale and with Mr Humphrey. That business involved a jewelry store.

The statement in closing argument prejudice the petitioner, it is the government duty not to present or use false testimony. See Brown v. Wainsright, 785 F.2d 1457, 1464 (11th Cir 1986) A prosecutor may not express any personal opinions about the

defendant's guilt or credibility or about matters requiring expert knowledge. The prosecutor knowingly misrepresented the witness -Britt Martindale's testimony; she gave at the preliminary examination December 10, 1987. In this case the only evidence of the petitioner's guilt, are the testimony of the witness Britt Martindale, and for the prosecutor knowingly misrepresented the testimony of that witness when this case rested on the credibility of the witness Britt Martindale.

4. PETITIONER WAS DENIED THE EFFECTIVE
ASSISTANCE OF COUNSEL GUARANTEED THE
PETITIONER BY THE SIXTH AMENDMENT TO
THE UNITED STATES CONSTITUTION.

The United States Supreme Court has held that ineffective assistance of counsel in violation of the Sixth Amendment requires A,

"Showing that counsel made errors so serious
that counsel was not functioning as the
'counsel' guaranteed the defendant by the
sixth amendment.

"[T]he proper standard for attorney performance is that of reasonably effective assistance Strickland v. Washington 466 U.S. 668, 687 (1984).

In this case the petitioner, was denied a fair trial by his court appointed attorney, when she would not push the motion to sever the petitioner Charles Webb's trial from the co-defendants

Humphrey, that the petitioner's privately retained attorney filed.

If a court finds compelling prejudice even though the initial joinder of defendant was proper, it must order severance. United States v. Lane, 474 U.S. 438,449 n.12 (1986); Kotteakos v. Unites States,328 U.S.750,765 (1946). Such prejudice may result from: (1) defendants' antagonistic or mutually exclusive defenses. Prejudice can result when conflicting and antagonistic defenses create an undue inference of guilt. See United States v. Buljubasic, 808 F.2d 1260, 1263-64(7th Cir.)(Severance necessary when co-defendant's defense portraying defendant as violent thug so inconsistent as to give rise to "unjustifiable inference" of guilt) cert denied. 108 S. CT. 67 (1987). But of United States v. O'Connell, 841 F 2d. 1408, 1432 (8th Cir1)(mere assertion that defenses may be inconsistent insufficient to require severance based on mutually exclusive or antagonistic defenses) cert. denied, 108 S. CT 2857 (1988). Joinder must not require the jury to choose between competing defenses so that believing one defendant necessarily convicts the other defendant. See Person v. Miller, 854 F. 2d 656, 666 (4th Cir 1988). (2) A co-defendant who has exculpatory testimony to offer at a separate trial but is unwilling to testify in a joint trial due to the potential for self-incrimination, or (3) A violation of the rule in Burton v. United States, 391 U.S. 123 (1968). The court in Burton held that the

sixth amendments' confrontation clause prohibits the introduction of a co-defendants extrajudicial confession if it incriminates the defendant even when it is introduced only against the co-defendant. Id. AT 137.

A denial of severance will only be reversed by the Supreme Court if it is affirmatively shown that a defendant's right to a fair trial has been impaired. State v. Velarde, No. 19682 (Utah Sup. Ct. filed December 4, 1986).

In this case the petitioner was denied a fair trial by his court appointed attorney from the legal defenders jointly representing co-defendants. Independent counsel would have actively sought a severance from Humphrey and would have distanced Webb from Humphrey in all aspects-as opposed, to joint motions and joint voir dire.

Neither the store owner nor the security guard identified the petitioner as the armed robber (T. 85, 187-188). None of the petitioner's fingerprints were found in the alleged get-away vehicle found near trolley square (T. 368-69, 379), A vehicle which Russell Martindale stole (T. 262, 344, 394). The only evidence against the petitioner consisted of the testimony of Britt Martindale and the gun, ring and watch seized from the petitioner apartment some two weeks after the robbery. Without Britt Martindale's testimony, there was no evidence to support a robbery

conviction against the petitioner, at best, it could be argued that he had possession of stolen property. State v. Kalisz, 735 P.2d 60 (Utah 1987).

What the evidence did establish is that co-defendant Humphrey robbed the jewelry store (T. 85, 187-188). Further, the evidence established that the person who stole the get-away vehicle was Russell Martindale (T. 262~~0~~, 344, 394), that Humphrey was living at the Martindale's at the time of the robbery (T. 277, 343). That immediately after the robbery, Humphrey shaved off his beard at the Martindale's home (T. 2~~44~~²²⁹). And that same night left for Las Vegas, Nevada with Russell Martindale (T.241). Subsequently, Humphrey returned to stay at the Martindale's (T. 293-294, 434).

The petitioner was denied a fair trial when he was tired with the co-defendant Humphrey, the petitioner, could not bring out to the jury that John Humphrey on September 4, 1987, robbed Sounds Easy Video. See appendix B2,¹ and that Britt Martindale just may have been John Humphrey's get-away driver, at the Sounds Easy Video Robbery, John Humphrey was staying with the Martindale's from September to October 21, 1987, the petitioner's court appointed attorney from the Legal Defender Association would not cross-examination the co-defendant John Humphrey in the defense, for the petitioner, due to a conflict of interest with the co-defendant's attorney from the same legal defender association. The

petitioner's court appointed attorney would not bring out to the jury that Russell Martindale did a robbery at Ungers Jewelers in Pittsburgh, Pennsylvania, see the affidavit of Rhonda Blanchard in appendix N. The petitioner was prejudice, and denied a fair trial when he was tired with the co-defendant Humphrey when the prosecutor in closing argument (T.618)

-Russ Martindale is the great leader of the pack. You saw him on the witness stand. Doe that man look like he is capable of pulling off an armed robbery without the help of anybody else? By himself? Were these gentlemen assisting him? UH-UH.

The petitioner's court appointed attorney would not bring out to the jury that the key witness Britt Martindale on November 3, 1987, gave a statement to Detective Harvey Jackson in that statement she told Detective Jackson that it was the petitioner, Charles Webb that did a robbery back east. Knowing it was her husband Russ Martindale that did the robbery. The witness Britt Martindale would say anything to keep her husband out of jail. See Davis v. Alaska, 415 U.S. 308, 316-17(1974). Compare Clark v. O'Leary, 852 F.2d 999,1005-08 (7th Cir. 1988) and U.S. v. Pritchett, 699 F.2d 317, 321 (6th Cir 1983)

The petitioner's court appointed attorney would not bring out

to the jury that Russ Martindale was a armed robber, and it was Russ Martindale that did the robbery back east, by himself without the petitioner assisting him, if it were made known to the jury that the wife of Russ Martindale would say anything to protect her husband the jury might have afforded less weight to the credibility of the witness, rather than upon the guilt of the accused. And for the petitioner's court appointed attorney not to push the motion to server, denied the petitioner, a fair trial, and due process guaranteed the petitioner, by the United States, and Utah Constitution.

Petitioner, Charles Webb was denied the effective assistance of counsel, when his court appointed attorney would not push the motion to suppress the shotgun that the petitioner's privately retained attorney filed. The shotgun introduced at trial was not the shotgun used in the robbery, and was prejudicial evidence being put before the jury.

Strickland also held that, in order for a defendant's claim of ineffective assistance of counsel to require reversal, the defendant must also show that the deficient performance prejudiced the defense. Strickland, 466 U.S. AT 687. To show such prejudice,

"The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the

proceeding would have been different." Id, AT 694.

Here, that is the case. At the preliminary examination, the security guard Steven Church gave testimony (P.T. 40)

"It was a automatic pump shotgun, 12 gauge silver barrel with a wood stock".

(P.T. 43)" Now you have indicated that, that this was a 12 gauge shotgun why are you so sure?

(A) I'm familiar with weapons sir.

(Q) Could you tell what color the stock of that weapon was?

(A) A maddick, brown, natural finished wood dark.

(P.T.44) Did you notice any additions or subtractions to the weapon, other then what you have already testified to?

(A) No Sir.

On cross examination (P.T. 53) do the security guard Steve Church.

(Q) A. The shotgun you have indicated that was a 12 gauge gun, I assume you have your experience with guns from the

military primarily.

(A) Yes mamn.

(Q) And you have indicated the color was it the barrel was silver but the stock of it was dark wood.

(A) Matt wood, yes mamn, matt finish wood.

The shotgun introduced in evidence by the state was prejudicial, and the petitioner's court appointed attorney should have pushed the motion to suppress the shotgun that the petitioner's privately retained attorney filed. The shotgun introduced at trial as a 12 gauge shotgun with a blue barrel, and a pistol grip with black tape around the pistol grip. At the preliminary examination (P.T.51) on cross examination of the security guard Steven Church.

(Q) It didn't frighten you to have a shotgun pointing at your abdomen?

(A) I've had it before.

(Q) How many times?

(A) To many to count, I'm a retired military man, two tours in Viet Nam so I have dealt with firearms before.

The security guard Steven Church would be an expert witness on firearms, he is a retired military man with two tours in Viet Nam,

and his testimony, that the shotgun used in this robbery was a automatic pump shotgun 12 gauge silver barrel with a wood stock a maddick, brown, natural finished wood dark.

It was prejudicial for the petitioner's court appointed attorney not to push the motion to suppress the shotgun that the petitioner's privately retained attorney filed.

The petitioner's court appointed attorney deficient performance prejudiced the petitioner's defense. The petitioner could not bring out to the jury that the shotgun introduced in evidence was not even similar to the shotgun used in this robbery. If the jury would have known that Russell Martindale on November 11, 1987, gave a statement to Detective Harvey Jackson, and on page 14, of that statement was asked.

(A) And did you see the shotgun?

(A) Yea, I did when he took it out.

(Q) Took it out of what?

(A) Out of the house.

(Q) Where was it?

(A) Uh, he stuck it in the bag, in the bag.

At trial, Russell Martindale gave testimony (T.395)

(A) She just said she wanted the gun of the house, then Mr Webb took it out of the house.

At the preliminary examination Britt Martindale gave ,
testimony. (P.T. 86)

(Q) Who took the shotgun?

(A) Both, well I handed it to them. I took
it out the door.

(Q) And handed it to.

(A) Chuck.

(Q) He was going to leave without it?

(A) No.

(Q) Was he leaving when you walked out the
door to hand it to him?

(A) No.

(Q) He was coming?

(A) He just got there.

At trial Britt Martindale gave testimony (T. 241)

(A) They came and got my husband and I handed
the shotgun to Chuck and they left for
vegas.

In closing argument (T.619) the prosecutor told the jury.

"The rusty color that Mr. Karmilian talked
about was the color of the stock. It wasn't
the color of the barrel. And no amount of
twisting or working with his transcript or his

preliminary hearing testimony is going to change that.

The prosecution stated facts not in evidence and, misstated Mr Karmilian's testimony he gave at the preliminary examination, to lead the jury to believe that this was the shotgun used in this robbery. The testimony Mr Karmilian gave about the shotgun appears in appendix O, 1 of 3 pages.

Mr. Karmilian never did say that the rusty part, was the stock of the shotgun, but he did give testimony that the rusty part was the barrel.

The petitioner's court appointed attorney prejudiced the petitioner's defense, when she would not push the motion to suppress the shotgun. Strickland, 466 U.S. AT 687. To show such prejudice the petitioner, could not bring out to the jury that the shotgun Britt Martindale testified as being the shotgun she seen at her home the day of the robbery, could not have been but was the shotgun that she seen at the petitioner's home many times before, the petitioner could not bring out to the jury that the key witness Britt Martindale would say anything to keep her husband's plea bargaining with the state of Oregon, Idaho, and Pennsylvania.

If the jury would haven known that this was not the shotgun used in this robbery, the jury may have given less weight to the credibility of the key witness Britt Martindale, and more weight to

the credibility of the Apartment manager April Dean, who testified that she did not see the petitioner, Charles Webb or his car at the apartments in the month of October but did see ~~the~~ him, and his car the first part of November (T. 417-18).

The petitioner was denied a fair trial, and due process by his court appointed attorney when she would not file a motion for pre-trial determination of the admissibility of co-defendants statements. At the preliminary hearing the Honorable Judge Grant on the courts own motion, told the prosecution, and the attorneys from the Salt Lake Legal Defender Association, that if Russell Martindale, at some future date, he becomes a witness, then we have to deal with that. The prosecution, and the attorneys from the Salt Lake Legal Defender Association knew that Russell Martindale was going to be a witness for the State. See: The response to request for discovery in appendix P. At a hearing the petitioner, could have pre-trial determination of the admissibility of all co-defendant's statements because he believes that many, if not all would be inadmissible and, therefore, pre-trial exclusion would avoid prejudicial evidence being put before the jury. At such a pre-trial hearing the petitioner could have brought out that the statement Britt Martindale gave Detective Harvey Jackson that her husband left with the petitioner, and co-defendant Humphrey in petitioner car, at 11:30 p.m. the night of the robbery, could not

have happen. Russell Martindale on October 21, 1987 pawned items of jewelry in Las Vegas Nevada, and if he left Salt Lake City Utah at 11:30 p.m. on the night of the robbery, he could not have sold anything on the 21st of October, but if he left Utah right after the robbery as the anonymous letter said, page 4, and as co-defendant John Humphrey gave testimony to at trial (T.439)

(A) Yes. We left about 5:00, I think it was.

It could have been brought out in the hearing that the only way Russell Martindale could have pawned items of jewelry in Las Vegas, Nevada on the 21st, of October, was to have left Salt Lake City, Utah, at or about 5:00 p.m. on the night of the robbery.

At such a pre-trial hearing petitioner, could have brought out that Russell Martindale on November 13, 1987, gave a phone call recorded statement to Detective Harvey Jackson, and told Detective Harvey Jackson that he did a robbery at Ungers jewelers in Pittsburgh PA, and that he used a red bag, and he ran and climbed in the trunk of petitioner, car and petitioner, only gave him 500 hundred dollars to pay his rent, at such a pre-trial hearing, petitioner, could have brought out that this was what Russell Martindale's wife Britt Martindale told Detective Harvey Jackson happened in the Utah robbery. This evidence would bear only upon the credibility of the witness, rather than upon the guilt of the petitioner.

At such a pre-trial hearing petitioner could have brought out that on November 11, 1987, Russell Martindale gave a statement to Detective H Jackson on page 6 Russell Martindale told Detective Harvey Jackson.

I don't have dime one in my pocket and how,
how would I get home, you know.

At the hearing petitioner, could have brought out that the wife of Russell Martindale sent him money when he was out of town. See: Comcheck Public Money Transfer, in appendix Q.

At such a pre-trial hearing the witness Russell Martindale would have been charged with aggravated robbery by the order of the preliminary hearing Judge Grant, (P. Tape 87-2413 side B)

And if you admit on this stand any implication
of this crime what so ever the court will have
no other choice but to instruct the county
attorney to follow action.

Under Burton v. United States, the witness Russell Martindale's out of court confession would have been inadmissible, and, therefore, pre-trial exclusion would have avoided prejudicial evidence being put before the jury.

(P.Tape 87-2413 Judge Grant talking about Russell Martindale's testimony.

Now the conspiracy aspects for Mr. Webb I can

understand, but even at that rate he just may simply become a co-conspirator and quash the fact.

The petitioner's court appointed attorney prejudiced the petitioner's defense. Strickland, 466 U.S. AT 687 in keeping from the court a true and accurate transcript of the preliminary hearing when Russell Martindale took the stand. And led the court to believe that all that was said was Russell Martindale taking the 5th Amendment. See appendix G.

"The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" Id. AT 694.

Here, that is the case, at a pre-trial hearing a true and accurate transcript of the preliminary hearing would have been brought out, Russell Martindale would have been charged, with aggravated robbery by the order of the lower court, the fact would have been quash against the petitioner, when Russell Martindale became a co-defendant. The petitioner, would not have been tried with co-defendant Humphrey. The only evidence against petitioner was after the fact.

An accessory after the fact could not be indicted jointly with

the principal defendant, nor tried with him, but if tried at all, he had to be tried separately. People v. Chadwick, 7 Utah 134, 25 P. 737 (1891).

The aggravated robbery charge then would have been dismissed against petitioner a much different result than what actually occurred.

The petitioner, Charles Webb was denied his right to the effect assistance of counsel, because his appointed counsel, The Salt Lake Legal Defender Association, improperly represented both petitioner, and he co-defendant Humphrey, at their joint trial. This conflict of interest warrants a reversal of the petitioner's conviction.

In Holloway v. Arkansas, 435 U.S. 475, The United States Supreme Court reversed the convictions when it concluded that the trial court had improperly required a public defender to jointly represent three defendants despite timely objections that such representation created a conflict of interest. Where the potential of a conflict had been raised at trial, the court held that prejudice would be presumed. 435 U.S. AT 490.

Once notified, the court must take adequate steps to remedy the problem so that the defendant is not deprived of effective assistance of counsel. People v. Jones, 121 Ill. 2d 21, 111 Ill. Dec. 164, 520 N.E. 2d 325, 329 (1988). Citing, Holloway, 435 U.S.

475.

-Here, petitioner's, motion for severance, and co-defendant Humphrey's motions for conflict of interest and trial separation were sufficient to alert the trial court to the potential for conflict. But under Cuyler v. Sullivan 446 U.S. 335 (1980) The Supreme Court explained that a trial court has a limited duty to avoid potential conflicts of interest. Id. AT 346. That duty requires a court to initiate an inquiry into a potential conflict if it knows or reasonably should know that a potential conflict exists. Id. AT 347 (divergence or compatibility of co-defendant's interests are factors used to determine whether court had notice of potential conflict); see Holloway v. Arkansas, 435 U.S. 475, 484 (1978)(when court knows of conflict, it should appoint separate counsel or ascertain whether risk is too remote to warrant separate counsel);

In the case at bar, under Cuyler v. Sullivan, the trial court knew that a potential conflict exists. And was put on notice of the potential conflict at the preliminary hearing by the Honorable Judge Grant, see (P.Tape # 87-2413)

"The Honorable Judge Grant, it appears to me that with these two defendants you have a significant conflict, then to add in the fact, that Miss Harold is representing Gregersen,

that the legal defenders could even deal with it."

When a trial court has notice of a potential conflict and fails to inquire, the reviewing court presumes prejudice to the defendant. Compare Holloway v. Arkansas, 435 U.S. 475. 484 (1978)(violation of right to assistance of counsel when trial judge failed to investigate claim of possible conflict of interest on part of defendant's attorney) and U.S. v. Sutton, 794 F.2d 1415, 1419 (9th Cir. 1986)(dictum)(violation of right to assistance of counsel when defendant raised timely objection to joint representation based on risk of conflict of interest, and trial court failed to either appoint separate defense counsel or take adequate steps to ascertain whether risk too remote to warrant individual representation).

In the case at bar, the petitioner, ask his court appointed attorney for a true and accurate transcript of the preliminary hearing tape when Russell Martindale took the stand. To bring to the court of the conflict, petitioner's court appointed attorney gave the court a one page transcript and told the court that was all that was said. See appendix G. Co-defendant, John Humphrey in a pro se motion brought to the courts attention that the tapes was different then the preliminary transcript (R.11).

Co-defendant John E Humphrey in a prose motion put the trial

court on notice of the potential conflict. (R.12)

"Mr Humphrey: I might as well submit this motion for conflict of interest.

The court: I will deny them all, whatever they are."

In the case at bar, the trial court was put on notice and was timely notified of a potential conflict. See Holloway v. Arkansas, 435 U.S. 475, 484 (1978)(Failure of trial judge to investigate claim of possible conflict is violation of right to assistance of counsel).

Petitioner, Charles Webb, respectfully requests that this court reverse the conviction and grant petitioner, a new and separate trial with new counsel, free of any conflict.

5. THE EVIDENCE SEIZED AT THE HOME OF THE PETITIONER WAS IN VIOLATION OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

A person may waive fourth amendment protection by consenting to a warrantless search by law enforcement officers. Whether a defendant has voluntarily consented to a search is a question of fact which will be upheld on appeal unless the lower court's finding is clearly erroneous.

The burden is on the prosecution to prove by clear and convincing evidence that consent was in fact freely and voluntarily

given. United States v. Gonzales, 842 F.2d 748, 754 (5th Cir. 1988) . United States v. Massell, 823 F.2d 1503, 1507(11th Cir. 1987)(burden on prosecution to prove consent was voluntary).

On January 22, 1988, a motion was before the court to suppress, Detective Ray Dalling was called as a witness, for the state and testified as Follows: (665).

(By Mr Cope)

(Q) you were going to tell us how the police got into the residence.

(A) We knocked on the door, it was opened by Ms. Gregersen's son, the young...not the infant but the teenage boy.

(Q) And what did you say when the door was open?

(A) We identified ourselves as police officers and moved the young boy out of the way up against the wall.

J.C. Chester, Ms Gregersen's teenage boy called as a witness for the defendants and testified as follows: (R687).

(Q) What happened, do you recall what happened? Do you recall the police coming to the door?

(A) My mom went to the door and she unlocked

the door. When she was about to turn the knob, they pushed the door in and knocked her down, and then I heard a lot of noise and then the bedroom door opened, and then all I seen...then there was this cop holding the gun in my face.

Carolyn Renee Gregerson, called as a witness, and testified as follows for the defendants. (R 696)

(A) The police knocked on the door and I opened the door. I unlocked it and just as I was going to open it, it was pushed. The door was pushed in at me and I was knocked on the floor.

(Q) Now, do you remember talking to the officers about (R.697) consenting to a search?

(A) No, I do not.

(Q) Do you remember signing a document?

(A) No, I do not.

(Q) Do you remember reading a document?

(A) No, I do not.

(Q) Then you were taken to the jail?

(A) Yes.

On January 22, 1988, The Honorable James S Sawaya denied the motion to suppress. That denial by the court appears in appendix R. The Honorable James S. Sawaya did not believe Carolyn Renee Gregersen when she told the court that she did not sign the permission to search agreement, but did believe Detective Harvey Jackson when he gave testimony (R653).

Detective Dalling went over the right for him to search and Renee signed it and I witnessed it along with detective Dalling.

The Honorable James S Sawaya also believed the testimony of detective Ray Dalling over the testimony of Carolyn Renee Gregersen, when detective Ray Dalling gave testimony (R.670).

A: No, on the contrary, I had explained to her that she did not at anytime have to give us permission to search. Also explained to her that anytime she wished to, she could drop her consent to the search and the search would be stopped.

Renee Gregersen did not sign the permission to search form see the affidavit of Renee Gregersen in appendix S. Carolyn Renee Gregersen knew she did not sign the questioned search document. To show the court that she did not sign the permission to search agreement Carolyn Renee Gregersen brought in Linda J Knight an

experts witness who gave testimony May 20, 1988, at the renewed motion to suppress, that her opinion is (R.29) that Carolyn Renee Gregersen did not sign the consent to search form.

Rule 12 (G)(4)(77-35-12, enacted by L. 1980, Ch 14,§1; L. 1982,Ch 10,§3.)

If the defendant or applicant establishes that the search or seizure was unlawful and substantial by a preponderance of the evidence, the peace officer or governmental agency must then, by a preponderance of the evidence, prove the good faith actions of the peace office.

In the case at bar, the only evidence the prosecuting attorney offered to the court that the signature on the permission to search agreement was genuine, was his own statement to the court. (R.44)

But we don't think that has anything to say to this court because people have testified in this court about how the signatures were obtained.

The question before the court was not how the signatures was obtained, but was the signature genuine.

Detective Harvey Jackson, report on November 4, 1987, was that Carolyn Gregersen gave verbal consent for R/O to search the

premises, and property was seized and placed in evidence. The November 4, 1987 report of Detective Harvey Jackson appears in appendix T.,

On January 22, 1988, a motion was before the court to suppress detective Harvey Jackson, called as a witness, at the instance of the state, and testified as follows: (R.653)

It was a consent to search form. I filled out the initial part of the information, referenced Renee's name in the address. Detective Dalling went over the right for him to search and Renee signed it and I witnessed it along with detective Dalling.

The testimony detective Harvey Jackson gave January 22, 1988, WAS inconsistent to his statement in his police report of November 4, 1987. This would draw in the credibility of the witness and the good faith of the peace officer.

The prosecution did not prove by clear and convincing evidence that Carolyn Renee Gregersen signed the permission to search form.

The prosecution brought in no expert witness to give testimony that the signature on the permission to search form was Carolyn Renee Gregersen's.

The petitioner establishes that the search was unlawful by a preponderance of the evidence when Linda J Knight an experts

witness a Certified Graphoanalyst gave testimony that her opinion is (R.29).

My opinion is that Carolyn Gregersen did not sign the consent to search form.

The court denied the renewed motion to suppress on May 23, 1988, without citing any authority, the court failed to meet the procedural requirements of Utah Code Ann. §(77-35-12) Utah Rules of Criminal Procedure Rule 12 (G)(1) for the court to deny the renewed motion to suppress was so erroneous, the preponderance of the evidence proved that the search was unlawful and a violation of the Fourth Amendment to the United States Constitution.

This case should be reversed, and grant the petitioner, a new trial, free from any violations of the United States Constitution.

**6. THE FIREARM ENHANCEMENT DOES NOT
APPLY TO THE PETITIONERS CONVICTION
FOR AGGRAVATED ROBBERY.**

The state has the authority to define the elements that constitute criminal conduct and may design statutes that facilitate proof of every element. see: McMillian v. Pennsylvania, 477 U.S. 79, 85 (1986)("In determining what facts must be proved beyond a reasonable doubt the state legislature's definition of the elements of the offense is usually dispositive")

The Eighth Amendment's prohibition against cruel and unusual

punishment. See Gentry v. McDougall, 685 F.2d 322, 323 (9th Cir. 1982).

Due process does not require the government to prove beyond a reasonable doubt the existence of facts that do not bear on the defendant's guilt. See. U.S. v. Sandini, 816 F.2d 869, 875-76 (3rd Cir. 1987).

For example, in McMillan v. Pennsylvania, 477 U.S. 79 (1986) The Supreme Court upheld a statute that established a minimum sentence of five years imprisonment if the sentencing judge found, by a "Preponderance of the evidence", that the defendant "visibly possessed a firearm" during the commission of the underlying offense. Id at 84, 91. The reasonable doubt standard was inapplicable in proving "visible possession" of the firearm because that fact was not an element of the offense for which the defendant was charged. Id. at 87. Visible possession became an issue only after the defendant was found guilty of the underlying felony. Id. Furthermore, the statute did not provide for greater punishment; it merely required a minimum sentence already permitted under state law, Id. at 87-88.

Sentencing enhancement statutes similar to that in McMillan, have been upheld as long as the fact that brings the statute into play is not an element of the offense, but rather a sentencing factor irrelevant to guilt, or innocence.

In the case at bar Utah Statute § 76-6-301, ROBBERY;

(1) Robbery is the unlawful and intentional taking of personal property in the possession of another from his person, or immediate presence, against his will accomplished by means of force or fear.

(2) Robbery is a felony of the second degree.

In the enhanced statute Utah Code § 76-6-302(1978), AGGRAVATED ROBBERY;

(1) A person commits aggravated robbery if in the course of committing robbery, he:

(A) uses a firearm or a facsimile of a firearm, knife or a facsimile of a knife or a deadly weapon;

(B) causes serious bodily injury upon another.

(2) Aggravated robbery is a felony of the first degree.

The firearm enhancement does not apply to the petitioner's conviction for aggravated robbery. The fact that brings the enhanced statute Utah Code § 76-6-302, to a felony of the first degree, and, a greater punishment, then that of Utah Code § 76-6-301, a felony of the second degree, is the 'element of a firearm or a facsimile of a firearm, knife or a facsimile of a knife, or a

deadly weapon. The five year firearm enhancement to run consecutively to the sentence of five years to life would be double punishment and a violation of the Eighth Amendment to the United States Constitution. See McMillian v Pennsylvania, 477 U.S. 79, 85 (1986). The Judgment, Sentence, Commitment appears in Appendix V.

The Utah Legislature has clearly expressed its intention to more severely punish all felons who use a firearm. State v Russell, 791 P.2d 188, 191 (Utah 1990). Russell, 791 P.2d at 191. In the case at bar, it was the prosecutions theory of the case, that the petitioner drove the get-away car and otherwise aided in the robbery.

On July 15, 1988 this case came of for a sentencing hearing before the Honorable James S. Sawaya, Judge presiding. (S.T. 734)

If the court is considering imposing a firearm enhancement, I would indicate that the evidence was that Mr. Webb was not a participant in the robbery itself according to the evidence, and therefore, would not have been in possession or would not have used a firearm toward another person. I believe that it would be inappropriate to enhance any sentence with the use of a firearm enhancement clause.

A copy of the sentencing hearing transcript, page 734 is attached hereto in Appendix W.

The sentencing Court erred when the Judge sentenced the petitioner to an additional five years to run consecutively to the sentence of five years and may be for life for the firearm enhancement on the element of the aggravated robbery charge and not on the evidence that petitioner used a firearm. See Sentencing Transcript in appendix X (page 737).

(S.T. page 737) "It will be the judgement and sentence of this Court that each shall serve the indeterminate term provided by law for the offense of aggravated robbery. That being not less than five years and what may be for life. The Court will find that based upon the findings of the jury that they have been found guilty of that charge which contains an element of the use of a firearm. The Court will find that the firearm enhancement statute does apply."

The Sentencing Judge abused his discretion and violated the petitioner's rights to due process when the Judge based the firearm enhancement on the findings of the jury that the petitioner was found guilty of aggravated robbery which contains an element of the use of a firearm, and not on the proof of the preponderance of the evidence that the petitioner did not use a firearm. The Sentencing Judge used the fact that brings the statute, Utah Code § 76-6-302, into play to sentence the petitioner to a greater punishment. The firearm enhancement should be reversed.

7. THE SIXTH JUDICIAL DISTRICT COURT DID NOT HAVE SUBJECT MATTER JURISDICTION TO CONSIDER APPELLANT'S PETITION

(A) RULE 65 D EXTRAORDINARY RELIEF.

(b) (1) Scope. Any person committed by a court to imprisonment in a state prison, or other correctional facility or county jail who asserts that the commitment resulted from substantial denial of rights may petition the Court for relief under this paragraph. This paragraph (b) shall govern proceedings based on claims

relating to the original commitments and commitments for violation of probation or parole. This paragraph (b) shall not govern proceedings based on claims relating to the terms or conditions of confinement.

Paragraph (b). This paragraph replaces subparagraph (i) of the former rule that the Petitioner/Appellant, filed his petition under 65 (L)(i) and the constitution of Utah Article 1, Section 5.

The Petitioner/Appellant raised claims in his petition that he was denied his rights under the Constitution of the United States, and Utah, to cross-examination the witnesses against him or to cross-examine his co-defendant John Humphrey. When the Trial Judge gave a protective order that any witness be it defense or prosecution concerning any alleged other bad acts by any witness would not be admissible. This denied the Petitioner the right in a jury trial for the jury to weigh the evidence and to determine the credibility of the witnesses.

At trial, on cross-examination by the Deputy County Attorney James W. Cope

(T. 407) Q. Now in an exchange with 's. Wells on direct examination about being asked you, back on the 11th of November 1967, you have indicated, also, that not all the things that you told the police at that time were true; is that right?

A. Just the part where I said Humphrey had not stayed at my house according to what my statement says. I don't recall.

The prosecution sat silently by while the witness Russell Martindale gave perjured testimony to the court and jury, and kept from the court and jury the statement Russell Martindale gave on November 12, 1967 to Detective Harvey Jackson that was inconsistent with the November 11, 1967 statement that Russell Martindale just gave perjured testimony to. The Trial Courts protective order denied

credibility of the witness Russell Martindale.

The Petitioner/Appellant was denied the effective assistance of counsel by the failure of his court appointed attorney to bring to the Court's attention the crucial points of the preliminary hearing when Russell Martindale took the stand. The crucial points was that the Honorable Judge Grant brought to the Courts attention before trial, of the conflict of the legal defenders jointly representing the co-defendant. The crucial point that was withheld was the order of Judge Grant to charge Russell Martindale with aggravated robbery in the case if he had any indication in this crime what-so-ever. See Brief in support of petition for Writ of Habeas Corpus, and Supplemental Brief in support of Motion for Summary Disposition, as Petitioner/Appellant's Brief on appeal in support of his argument.

The firearm enhancement does not apply to the Petitioner/Appellant's conviction for aggravated robbery. The fact that brings the enhanced statute Utah Code § 76-6-302 to a felony of the first degree, and a greater punishment, then that of Utah Code § 76-6-301 a felony of the second degree, is the element of a firearm. The Sentencing Judge based the firearm enhancement on the findings of the jury that Petitioner/Appellant was found guilty of aggravated robbery which contains the element of the use of a firearm, and not on the proof of the preponderance of the evidence that the Petitioner/Appellant did not use a firearm to sentence the Petitioner/Appellant to a greater punishment.

The petition for Writ of Habeas Corpus was properly filed in the State Supreme Court, when the Petitioner/Appellant has denied a fair trial and a substantial denial of his rights under the Constitution of the United States, and Utah Constitution. The Sixth Judicial District Court, Sanpete County, did not have

subject matter jurisdiction to determine the merits of the petition pursuant to Rule 65 B (b)(i). The Sixth Judicial District Court only had subject matter jurisdiction to hold a hearing in the interest of convenience and economy if the Petition should be transferred to the district court having jurisdiction over the place of confinement. The Sixth Judicial District Court does not have the Judicial power to over rule another District Judge, or the Utah Court of Appeals.

(D) Commencement. The proceeding shall be commenced by the filing of petition, together with a copy thereof, with the clerk of the Court in which the commitment leading to confinement was issued, except that the Court may order a Change Of Venue on the motion of a party for the convenience of the parties or witnesses.

The Petitioner/Appellant filed his petition with the State Supreme Court on December 10, 1991. The Petitioner/Appellant's petition was made returnable to the Sixth District Court for Sanpete County, stating that the Utah Supreme Court is an appellate Court and does not take evidence. Your petition has therefore been referred to the appropriate Court of general jurisdiction for disposition. See Appendix V.

On January 2, 1992 Petitioner/Appellant received notice from the Sixth District Court that on December 10, 1991 the petition for Writ of Habeas Corpus was received in the Sanpete County Clerk's office with a cover letter from the State Supreme Court Clerk. The cover letter stated "Pursuant to Article VIII, Sections 3 and 5 of the Utah State Constitution, the Utah Supreme Court hereby refers the enclosed petition for Writ of Habeas Corpus to the Sixth Judicial District Court of Sanpete County for such disposition as the District Court deems appropriate. Signed By Geoffrey Luttler See Appendix 7.

The Sixth Judicial District Court did not have subject matter jurisdiction

to determine the merits of the petition pursuant to Rule 65 B (b)(1) and 2, Utah Rules of Civil Procedure. The Sixth Judicial District Court was not the court in which the commitment leading to confinement was issued.

The petition was properly filed with the State Supreme Court when exigent circumstances existed under Rule 20 Utah Rules of Appellate Procedure. In the case at bar, the exigent circumstances were, when the portion of the preliminary hearing transcript where Russell Martindale took the stand at the November 24, 1987 preliminary hearing were kept from the trial Court, and the Court of Appeals. See Supplemental Brief in support of Motion for Summary Disposition and Brief in support of Writ Of Habeas Corpus as Petitioner/Appellant's Brief on appeal. The exigent circumstances were when the Court of Appeals based it's opinion on false information put before it. The Petitioner/Appellant was denied a fair trial as well as a fair appeal when the evidence was kept from the Court of Appeals.

The exigent circumstances were when the prosecution gave a perjured statement to the Court at the preliminary hearing on November 24, 1987. (Tape 87-2414) When the Court asked the prosecution if any offer of immunity or leniency was given to Russell Martindale and Britt Martindale for their testimony. See page 2 and 3 of the preliminary hearing, November 24, 1987 tape 87-2414 that was transmitted into transcript by Lynn Gadsby August 7, 1992 in appendix Z1. Russell Martindale was given full immunity for the aggravated robbery of Under's Jewelers in Pittsburg, Pa. See Appendix Z-2.

The Petitioner/Appellant prays that this Court will grant an evidentiary hearing in this case so that a full record can be made in this case.

CONCLUSION

In light of the foregoing, Appellant prays that this Court will reverse the

denial of the Sixth Judicial District Court, Sanpete County, and remand this case back to the trial Court for new trial free from any violation of the Constitution of the United States or the Constitution of Utah.

Respectfully Submitted this 22 day of September, 1992.

Charles W. Webb
Charles W. Webb
Attorney Pro Se
P.O. Box 550
Cannonville, Utah 84604

Certificate of Mailing

I hereby certify that a true and accurate copy of the brief of appellant was mailed , Postage Prepaid this 25 day of September, 1992 to:

Assistant Attorney General

David F. Bryant

6100 South 300 East, Suite 204

Salt Lake City, Utah 84107

Don P. Sparkman

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Appendix D:	The nine page, November 13, 1987 recorded phone call between Detective Harvey Jackson and Russ Martindale.
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Appendix F:	Affidavit for search warrant of Larry Johnson, Detective with the City of Medford, State of Oregon.
Appendix G:	The one page transcript.
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APPENDIX, Z-1: The November 24, 1987
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mitted into transcript by
Lynn Gadsby August 7, 1992.

APPENDIX-Z-2: Russell Martindale's immunity
for the aggravated Robbery
of Ungers jewels in Pittsburgh
PA.

SUPREME COURT OF UTAH
332 STATE CAPITOL
SALT LAKE CITY, UTAH 84114

May 2, 1989

OFFICE OF THE CLERK

Christine F. Soltis
72 East 400 south, #330
Salt Lake City, Utah 84111

The State of Utah,
Plaintiff and Appellee,

v.

No. 880283

Charles Webb,
Defendant and Appellant.

Pursuant to the the authority vested in this Court, this case is poured-over to the Court of Appeals for disposition. All further pleadings and correspondence should be directed to that Court. Their address is 230 South 500 East, Suite 400, Salt Lake City, Utah 84102.

Geoffrey J. Butler
Clerk

APPendix
A-1

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WEST JORDAN
DEPARTMENT OF PUBLIC SAFETY
South 2700 West, West Jordan, UT 84084

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ADDITIONAL INFORMATION AND DETAILS						

On 11-9-87, at 1345 hours, RO showed Helen Lamoreaux a photo lineup. Lamoreaux was the victim of an aggravated robbery.

Lamoreaux picked out a photograph of John E. Humphrey, and stated that she was absolutely sure that Humphrey was the person who robbed her at gun point at her place of employment.

This case will be presented to the County Attorney for prosecution.

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SE: 87-98611
SUBJECT: RUSS MARTINDALE
PAGE ONE

71 JUL 13 1987 AT 07:12 HOURS, BETWEEN

SE: 7-98611
BJFCT: RUSS MARTINDALE
GFL ONE

THE FOLLOWING IS A PHONE CALL RECORDED ON NOVEMBER 13, 1987. AT 37.12 HOUR BETWEEN
ARVEY JACKSON AND RUSS MARTINDALE.

PHONE RINGING.

: Hello?

Q: Good morning may I speak to Russ please.
A: This is him.

Q: Russ how are doing, this is Detective Jackson.
A: Oh I'm alright, how about you?
Q: Well I'm doing fine. Russ I understand that we need to go over a few more things.
A: Yea we do.

Q: Ok Russ let me explain something first of all. Do you recall the other evening when I advised you of your miranda rights?
A: Yea I do.

Q: Do you still remember those?
A: Yea I do.

Q: And you understand them?
A: Yes.

Q: And your willing to talk to me?
A: Yea I am.

Q: And were going to,
A: I just want to get this all cleared up.

Q: Ok, well,
A: As much as you do.

Q: Yea I appreciate it, and I talked to both Britt, and I talked to your rather, now I understand that your hesitancy to tell me everything ya know when we first talked I know you wanted to talk to your dad and get things squared away. But I think now is the time we need to take care of all this ok?
A: Yea I understand.

BRITT AND

: Ok from what I understand in speaking with your dad, a we need to discuss, that Twin Falls and Pittsburg?
A: Yea.

(!)

Q: Ok, which one would you like to start with Russ?
A: Ok, a Twin Falls I guess.

Q: Ok why don't you tell me about that?
A: Well a... ..a...when a the first time when a Truck took me to Las Vegas alright.

Q: A... ..then was this Russ?
A: I... ..I left with them ~~to eat out~~ ^{now he}. Went down there and

CASE: 87-98611
SUBJECT: RUSS MARTINDALE
PAGE TWO



Q: Is that when he went down and gambled the three hundred dollars?
A: Yea.

Q: Ok.
A: And a,we came right back and we stopped in Salt Lake and picked up
Ranee.

Q: A huh.
A: Drove up to Ranee's mom and dads.

Q: S o you were with Ranee and Chuck then?
A: Yes.

Q: Ok,
A: And then a when he got up there he ^{LEFT ME AT} um Ranee's mom and dad ^{AND WAS LOOKING OVER THIS PLACE} well
when I was, when I got up there he told me he had this place in mind, ^{HE HAD IT}
" FOR YEARS."

Q: Now does Ranee's mom and dad do they live in Twin Falls then?
A: Yes they do.

Q: Ok.
A: AND he went and looked over the place and he did it for a couple of days.
I had no idea what he was up to, and then ^{ONE} day that he decided to go do it,
he a he came back to me and he said well I want you to go get a car.

Q: A huh. ^I
A: Ok, so ~~we~~ went and got a car.

Q: Do you remember where you got that car from?
A: It was from a little car place in Burley.

Q: Ok. What kind of a car was it Russ?
A: It was yellow,I'm not sure the year it was a ^{MONZA} ~~Mazda~~, Chevy ^{MONZA} ~~Mazda~~.

Q: A huh, and how did you get that?
A: Just the same way I did ^{TO} Salt Lake.

Q: Took it for a test drive?
A: Yea.

Q: Ok did Chuck drop you off to get that car?
A: Yea he did.

Q: Ok so you got the car and what happened then?
A: Ok, we drove back into Twin Falls. He a explained to me,

Q: Ok now you drove into Twin Falls?
A: Yes.

Q: From where?
A: Burley.

Q: Oh so you got the car in Burley then?
A: Yea.

ASE: 87-98611
SUBJECT: RUSS MARTINDALE
AGE THREE

: And he explained to me where he wanted me to drive the car to out of ~~this~~ place.
~~THE~~

Q: Where was that suppose to be?
A: Well a I parked it on the next block over.

Q: From the jewelry store?
A: Yea.

Q: Ok.
A: And a and drove it to K-Mart after this thing happened.

Q: Ok.
A: And then a after that he said theres a box sitting in there on back counter.

Q: A huh.
A: He says all I want you to do go in grab the box and run out.

Q: Ok.
A: So that's what I did. Got in the car and went to K-Mart, and and then he told me to get in the back seat and lay down, and UTAH.

Q: And that was in his Cadillac?
A: Yes.

Q: So as far as you know that car was left at K-Mart.
A: Yes.

Q: Do you remember the ^{NAME OF} store Russ?
A: ...Um,I think it said Twins Fall Jewelry.

Q: Ok so there was Chuck and Ranee and you in the car then?
A: And the baby.

Q: And the baby. Russ what was in the box?
A: A from what I saw was just a bunch of junk. Ya know glass STONES worth like a dollar seventy-five a piece.

Q: What was suppose to be in the box?
A: He said there was a bunch of big, big stones. But I never saw

Q: You went in and grabbed the box, where was the box sitting Russ?
A: It was right on the back counter.

Q: On the back counter?
A: Yea.

Q: Was the owner of the store in there?
A: Yea he was sitting right in front.

Q: So you just ran in and grabbed it and took off?

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SUBJECT: RUSS MARTINEDALE
AGE FOUR

A: No just a hat and some white western shirt.

Q: What kind of a hat Russ?

A: A white hat.

Q: Like a baseball cap or,

A: Yea,

Q: White baseball cap and white shirt?

A:

Q: Ok so you grabbed it jumped in the car, drove to K-Mart you met Chuck and Raneer and then you came back to Salt Lake?

A: Yea, he he was over by ~~four~~ ^{THE STORE} and he followed me all the way to K-Mart.

Q: Oh I see ok. Um what happened when you got to Salt Lake?

A: A he then said a just ~~don't try to get rid of some of~~ ^{GO TRY TO GET RID OF SOME OF} ~~this stuff~~ ^{THIS STUFF} that's when he came back he said, he said well none of this stuff is worth anything he said well I'll just have to write it off.

Q: Do you have any idea where he went to get rid of it?

A: From what I understand he went to Ogden.

Q: To, a jewelry store or a pawn shop

A: _____.

Q: Do you know which one?

A: Um,a,I'm not sure what ^{THE} streets are in Ogden, it was right across the street from A MAIL ~~store~~ ^{ON ONE OF THE MAIN STREETS}.

Q: What happened to the box and the contents?

A: Well he a I-guess threw everything away ^{AND I} ~~SAW HIM~~ break the box up ^{AND THROW IT IN A} ~~AND~~ ^{DUMPSTER}.

Q: A huh. Ok, Russ I know that you mentioned that this happened after you got back from Las Vegas,

A: A huh.

Q: But can you narrow it down a little bit for me, even as to a month or anything like that?

A: August.

Q: It was in August sometime?

A: I'm pretty sure it is.

Q: Ok.

A: If you get a copy of my phone bill you'll probably find that I made a call from Twin Falls.

Q: So you call -i Britt then?

A: Yea.

Q: Ok, um what about Pittsburg then Russ?

A: Ok, after he said he didn't ~~take~~ ^{TAKE} none of his money back on that one, he a told me he he wanted me to go do this thing back here ya know to get his money back. ^{FROM WHAT HE} and I know he's making threats and everything. I didn't know what to do

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SUBJECT: RUSS MARTINDALE
PAGE FIVE

Q: So was it just you and Chuck then?

A: Yea.

Q: In the Cadillac?

A: A huh That's when, that's when a we went back there the first time.

Q: When was this about Russ?

A: A, it happened in, at the end of August. Around the first of September.

Q: Ok. Where did you go?

A: Well a,...he drove a through a,...Omaha, oh through Denver and up to Omaha and and such, and then a straight into Pittsburg.

Q: A huh.

A: And He, and he stayed there a couple of days, ok and then the next thing *I KNOW*
he came back to me and he says I found us a place.

Q: Where were you guys staying?

A: ...We were staying at the Red Roof Inn out at the airport.

Q: In Pittsburg?

A: Yea.

Q: And that's called the Red Roof Inn?

A: Yea.

Q: Ok.

A: And then he found this place and they had a a great big box ^{IN} ~~OF~~ a safe,

Q: A huh.

A: AND THE SAFE WAS OPEN *JUST*
and he came back to me and he said, *JUST* run in and grab that box out of the safe and take off.

Q: A huh.

A: And ~~in~~ in this big bag. So that's what I did.
STUFF IT

Red BAG-

Q: So you went into the store?

A: Yes I did.

Q: And what did you do once you got inside the store?

A: I grabbed the box, and,..ran out and he was parked in a parking terrace, and
I ran in the parking terrace and he told me to climb in the trunk.

Q: A huh.

A: So that's what I did. And then he let me out about two hours later.

Q: Were you wearing any type of disguise Russ?

A: A no I just had shirt shirt.
ON MY SWEAT

Q: Do you remember the name of this store?

A:Oh,..let me see,.....it's um, Ungers.

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PAGE SIX

Q: Ok. Did you see what was in the box Russ?

A: He pulled out of another box, the a, and a when he let me out ~~and~~^{he} went through ~~the box~~ THEM ALL AND TOLD ME TO GET MY CASH OUT WHEN HE OPENED IT UP.

Q: A huh.

A: So that's what I did and _____. Like it was a whole lot heavier.

Q: A huh.

A: And when he opened it up there was nothing in it but another little box. And ~~there~~^{THERE WAS} nine diamonds were in there.

Q: What happened to those Diamonds?

A: We went down to Indianapolis, Indiana and sold them to another guy.

Q: Do you know who that was?

A: A,.....I don't know the name of the place, but the only way I can find it is to go there and show someone how to get there.

Q: Was it a pawn shop or a jewelry store?

A: It was a coin store.

Q: What was it near, do you remember anything?

A: A no it was way out on a, on a road near _____ like each side of the road is a neighborhood and small businesses.

Q: A huh.

A: THAT'S ALL I CAN REMEMBER ABOUT THAT.

Q: Do you remember how much money he got?

A: He made about fifteen hundred dollars.

Q: Did you get any of that money Russ?

A: He gave me five hundred dollars to pay my rent for September.

Rent.

Q: Ok Russ did you use a gun in either of those places?

A: He bought a toy gun and told me to stick it down my pants.

Q: A huh.

A: So that's what I did, he told me that I couldn't get in trouble for it.

Q: Did you show the clerk the gun?

GUN

A: No. I just kind of, I didn't even really show it to her, I just kind of patted ~~her~~ MY STOMACH. THAT'S WHAT HE TOLD ME TO DO.

Q: So did you grab that box out of the safe or did the a clerk?

A: I did. She just, he told me if she started screaming tell her to shut up or I'd kill her BUT I didn't do that, I just when I patted my stomach she went running off calling somebody and I panicked and I opened the safe and grabbed the box and ran.

Q: Did Chuck happen to mention whether or not he had done either of those stores before?

A: Um, I'm pretty sure he did, he said he had robbed a,.....burglarized a jewelry store right down the street on the corner in Twin Falls.

Q: How long ago was that?

A: he didn't he didn't say when it was.

CASE: 87-98611
SUBJECT: RUSS MARTINDALE
PAGE SEVEN



Q: Did he tell you what he got out of it? *I'M NOT SURE*
A: He said a got a bunch of rings and something ~~he didn't know~~.

Q: Anything else you can remember about those Russ?
A: That's about it on those

Q: So on the Twin Falls store, you went in knowing you were going to steal that?
A:He didn't tell me until the same day.

Q: But when you went in the store you knew what you were going to do?
A: I knew that, ~~that~~ he WANTED THE BOX.

Q: A huh.
A: he told me that that it's always been sitting there *AND IT WOULDN'T BE HARD TO STEAL. I WALKED UP THE*
~~he~~ picked it up and ~~ran~~ out.
RAN

Q: Are we honest on everything now Russ?
A: Yea.

Q: We're postive huh?
A: Yea.

Q: Ok. Ok now you said he went to Medford, who is that?
A: Chuck.

Q: Ok.
A: THAT'S WHEN *ME AND HUMPHREY WERE WITH HIM*

Q: So Chuck, Humphrey and you went to Medford?
A: Yea.

Q: When was this? ..
A: It was about three weeks ago.

Q: This was before the Salt Lake robbery then?
A: After.

Q: Oh it was after the Salt Lake robbery ?
A: Yea.

Q: Ok.
A: He's still complaining about it. Me paying him back, and threatening to do harm to Britt and I and the kids.

Q: A huh.
A: I didn't know what to do. I just I,..I wanted to, I didn't want to go with them.

Q: What happened in Meford then?)
A: Ok theres a, there was a jewelry store there.

Q: A huh.
A: It's in the night time. And I guess he found this place out for a long time. He told me that all they had to do was run up and, and run right into the front window. And a it would pop outbecause it was plastic. And he gave me a HAMMER and I went

AND BAG

DOES

and he said just smash out the counter and take all of it.

1. he told me that I should walk over next to the freeway and that's where
ould pick me up.

you do that?

I did.

I broke the window out and went in?

S. you remember the name of this place?

, I don't. At this time I'm pretty messed up in my mind.

What kind of property did you get out of this store?
Just rings.

Do you remember how many?

There was about one hundred of them.

What happened to that property?

He gave me one hundred dollars and said that it was all fake and a I didn't believe
him because Britt called Western Union and they said that he wired Renae twenty five
hundred dollars that same day.

A huh.

I guess HE WENT somewhere in PORTLAND AND CASHED IT ALL IN.

Did Humphrey do anything on the job?

No he didn't.

But he knew what was going on?.

Yes.

Q: So a if I understand you correctly Chuck picked ^{OUT} the place you went and smashed
the window, smashed the counters and grabbed the stuff?

A: Yes.

Q: Ok.

A: And he took both merchandise.

Q: And gave you one hundred dollars?

A: Yea.

Q: And that was after the Salt Lake robbery?

A: Yea, when I found, when I heard that he sent Renae twenty five hundred dollars
I a, he had left that same night to do something I'm not sure he told me ^{HE WAS GOING TO} play poker.
and I was so disturbed I called my dad, I decided to have him come and pick me up.
and I walked back to the room and got all my stuff.

Q: Was that the same night the burglary happened?

A: No, the burglary happened at 5:30 in the morning.

CAST: 87098611
SUBJECT: RUSS MARTINDALE
PAGE NINE

A: That's when I traded IT ALL IN.

Q: So this was after Stockton, you left Stockton and went up to Oregon?

A: Yea.

Q: So it was after that burglary that you left?

A: Yea.

Q: Ok.

A: I just could'nt take anymore. _____ breaking the law _____ if anything happened.
it may sound stupid _____.

Q: Does a Britt or your dad know about that place?

A: I don't think so.

Q: Ok, are we clear on everything now Russ?

A: That's everything.

Q: No more supprises huh?

A: Well I had to give YOU EVERYTHING, ^{YOU NEED SOMETHING TO WORK WITH, IF}
^{UP, AND YOU DIDN'T KNOW}
IT GIVES about it. Ya know I imagine it could
hurt your case.

Q: Well the case is not a problem it would have been damaging for you and Britt.

A: Yea well I JUST WANTED TO GET IT ALL OUT IN THE OPEN

Q: Well I appreciate that Russ, now I'll call Jim at seven o' clock then.

A: Ok.

Q: Ok.

A: He should be there by then. I've got to get out of here I'll be late for work.

Q: Ok I'll give him a call at seven then?

A: Alright.

Q: Thanks Russ.

A: Ok we'll talk to you later.

Q: Bye bye.

A: Bye.

THIS WILL CONCLUDE THE PHONE CALL CONVERSATION THE TIME NOW IS 07:36 HOURS.

THIS TAPE HAS BEEN TRANSCRIBED BY KAYE HEAPS 96D ON THE EIGHTH FLOOR OF THE MHJ.

ALL CORRECTIONS MADE BY DET. JACKSON, 12/2/87.

H. Jackson

DAVID E. YOCOM
County Attorney
JAMES M. COPE
Deputy County Attorney
Courtside Office Building
231 East 400 South, 3rd Floor
Salt Lake City, Utah 84111
Phone: (801) 363-7900

*Δ wants
copy of info.*

*PG Grant
11-19-87
9:30*

Jail

IN THE FIFTH CIRCUIT COURT, SALT LAKE DEPARTMENT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	)	Screened by: J. Cope
	)	Assigned to: to be assigned
Plaintiff,	)	BAIL \$100,000.00 (A)
	)	BAIL \$50,000.00 (B)
v.	)	BAIL \$25,000.00 (C)
	)	INFORMATION
JOHN E. HUMPHREY, DOB 12/16/34,)	
CHARLES WEBB DOB unknown,	)	Criminal No.
CAROLYN GREGERSEN DOB 11/02/47,	)	87 1010418
Defendant(s).	)	1010419
	)	1010420

FS

The undersigned H. Jackson - SLCPD under oath states on information and belief that the defendant(s) committed the crimes of:

COUNT I

AGGRAVATED ROBBERY, a First Degree Felony, at 602 East 500 South, in Salt Lake County, State of Utah, on or about October 21, 1987, in violation of Title 76, Chapter 6, Section 302, Utah Code Annotated 1953, as amended, in that the defendants, JOHN EDWARD HUMPHREY, CHARLES WEBB and CAROLYN GREGERSEN, as parties to the offense, unlawfully and intentionally took personal property in the possession of King Custom Jewelers from the person or immediate presence of Karekine Karmilian, against his will, by the use of a firearm or a facsimile of a firearm;

COUNT II

AGGRAVATED ASSAULT, a Third Degree Felony, at 602 East 500 South, in Salt Lake County, State of Utah, on or about October 21, 1987, in violation of Title 76, Chapter 5, Section 103, Utah Code Annotated 1953, as amended, in that the defendant, JOHN EDWARD HUMPHREY, a party to the offense, assaulted Stephen Church, by the use of a deadly weapon, to-wit: a firearm;

(Continued on page Two)

87 1010419
1010420

INFORMATION

STATE v. JOHN E. HUMPHREY, CHARLES WEBB and CAROLYN GREGERSEN
County Attorney #87-1-7382201/02/03

Page Two

THIS INFORMATION IS BASED ON EVIDENCE OBTAINED FROM THE FOLLOWING WITNESSES:

Det. John Lomax Sgt. Bill Abbott Det. H. Jackson Britt
Martindale Russell Martindale Stephen Church Karekine Karmilian

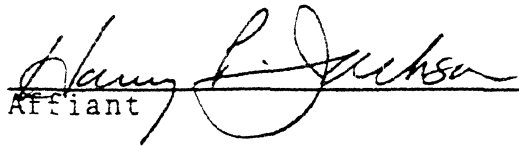
PROBABLE CAUSE STATEMENT:

Your affiant is a police detective investigating case #87-98611, the report of which he has read and relies upon in asserting that Mr. Karekine Karmilian, a co-owner of King Custom Jewelers at 602 East 500 South, Salt Lake City, reported that a bearded man with a sawed-off shotgun took \$40,000.00 worth of jewels, and jewelry from the store on October 21, 1987 without permission. During the course of the robbery, the bearded man also threatened Stephen Church with the shotgun noted by Mr. Karmilian.

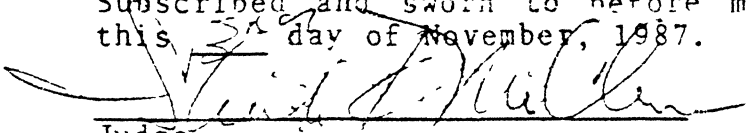
Britt Martindale reports that on the afternoon of October 21, 1987, Charles Webb and Carolyn Gregersen drove up to Martindale's home at 438 East Wasatch in a silver-blue 1983 Cadillac. Webb got out and opened the trunk of the car. John Humphrey, a bearded man, then stepped from the trunk of the car. Humphrey then carried a canvas bag into Martindale's residence. Humphrey then went to the bathroom, leaving the canvas bag on the kitchen table.

From the bag Webb took display trays of rings and other jewelry as well as a sawed-off shotgun. Webb gave Gregersen who was watching, a diamond timepiece and told her she could keep it. He then took all the items from the trays.

Humphrey emerged from the bathroom clean-shaven and left the residence with Gregersen and Webb, who had placed the jewelry back into the canvas bag which Humphrey had brought into the residence earlier.

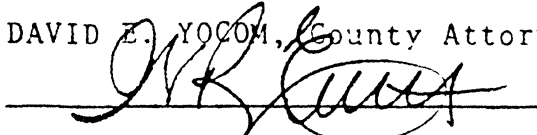

Affiant

Subscribed and sworn to before me
this 31 day of November, 1987.


Judge

Authorized for presentment and
filing:

DAVID E. YOCOM, County Attorney


, Deputy

1 STATE OF OREGON)
2) ss. AFFIDAVIT FOR SEARCH WARRANT
3 COUNTY OF JACKSON)

4 I, Larry Johnson, after being first duly sworn upon oath,
5 depose and say:

6 That I am a detective with the Medford Police, located in
7 the City of Medford, County of Jackson, State of Oregon, and that
8 I have been so employed for the past 15 years.

9 That I have reason to believe that that certain business
10 known as Mike The Traders, located at 401 South West Alder Street
11 in Portland, Multnomah County, Oregon, said business being a
12 second hand store operated and owned by Mike Vaden contains one
13 hundred seven gold rings stolen from the business of John Nuich
14 Jewelers located at 231 East Main Street, in Medford, Jackson
15 County, Oregon on or about the 29th day of October, 1987, and
16 that said one hundred seven gold rings are the subject of theft
17 therefore subject to seizure.

18 That the facts supporting my above described beliefs are as
19 follows:

20 That in the early morning hours of October 29, 1987, the
21 Medford Police Department was informed by John Edward Nuich who
22 is the owner of John Nuich's Jewelry at 231 East Main Street in
23 Medford, Jackson County, Oregon. That his business had been
24 broken into and was the victim of a theft. That officers from
25 the Medford Police Department investigated said complaint. That
26 it was discovered that shortly before 5:00 a.m. on October 29,
27 1987, unknown persons had entered said business by kicking and
28 breaking a 3' by 5' front window. That after entering the
business the glass in a display case inside the business was

1 broken out and it was determined by Mr. Nuich that a total of one
2 hundred and seven gold rings were stolen from said display case.
3 That said rings were of all kinds, shapes and descriptions and
4 are more accurately set forth on Exhibit A which is a list
5 furnished to me by Mr. Nuich which is attached to this affidavit
6 and by this reference incorporated herein.

7 That on November 13, 1987, I talked on the telephone with
8 Detective Harvey Jackson of the Salt Lake City Utah Police
9 Department. That Detective Jackson told me that on October 20,
10 1987, a jewelry store in Salt Lake City had been robbed. That
11 Detective Jackson told me that he was personally contacted by a
12 female named Brit Martindale on October 26, 1987. Detective
13 Jackson told me the Brit Martindale advised him that she had
14 information concerning his robbery. That Detective Jackson
15 subsequently took a statement from Brit Martindale. That Detec-
16 tive Jackson told me that Brit Martindale's statement was that
17 the robbery in Salt Lake City was committed by a John Humphries,
18 a Charles Don, also known as Charles Webb and a Carol Greyson.
19 That Ms. Martindale informed Detective Jackson that she had been
20 told by her husband, Russell Martindale, that Russell Martindale
21 was also involved. That Russell Martindale had advised Ms. *well*
22 Martindale that the other subjects had made Russell Martindale
23 steal a vehicle and that said vehicle was used by Humphries in
24 the robbery of the Salt Lake City jewelry store. That Ms.
25 Martindale further advised Detective Jackson that Mr. Humphries,
26 Mr. Don and Mr. Martindale had then left the Salt Lake City area.
27 That Ms. Martindale advised Detective Jackson that Russell
28 Martindale said that he was afraid of Don and Humphries and told

1 Ms. Martindale that he was being forced to help them do robberies
2 and burglaries. That Ms. Martindale provided Detective Jackson
3 with a phone number where he could reach her husband, Russell
4 Martindale in Vancouver, Washington. That Detective Jackson told
5 me that he subsequently contacted Russell Martindale and later
6 met with and interviewed Russell Martindale in Vancouver, Wash-
7 ington. That Detective Jackson told me that Russell Martindale
8 stated that after the Salt Lake City jewelry store theft Mr.
9 Martindale, Mr. Don and Mr. Humphries drove to Nevada where they
10 sold that jewelry. That Mr. Martindale told Detective Jackson
11 that they ended up in Medford, Oregon, where Russell Martindale
12 at the direction of Mr. Don and Mr. Humphries burglarized a
13 jewelry store. That Detective Jackson told me that Russell
14 Martindale stated that he knew the jewelry store in Medford was
15 called John Nuich Jewelers. That Detective Jackson told me that
16 Mr. Martindale stated that he kicked in the front window, then
17 kicked out the display case glass and took a large number of
18 rings. That Russell Martindale stated to Detective Jackson that
19 he then exited the store and was picked up by Mr. Don and Mr.
20 Humphries. That Russell Martindale stated that this had occurred
21 on October 29, 1987, in the very early morning hours. That Mr.
22 Martindale then stated that all three of the subjects then drove
23 to Portland, Oregon, where the checked into a motel room. That
24 Mr. Martindale told Detective Jackson that in early afternoon of
25 October 29, 1987, that Mr. Don and Mr. Humphries took the rings
26 that Mr. Martindale and stolen from John Nuich Jewelers in
27 Medford out of the motel room for the stated purpose of selling
28 the said rings. That Mr. Martindale told Detective Jackson that

T.C.
the
11/19/87

1 since he was left alone he decided to take advantage of the
2 chance to get away from Mr. Don and Mr. Humphries therefore he
3 left the motel and went to Vancouver, Washington, where he was
4 later contacted by Detective Jackson.

5 That I have reviewed the statement of Mr. Martindale as
6 relayed to me by Detective Jackson and am convinced that Mr.
7 Martindale had to have been involved in the burglary of John
8 Nuich Jewelers to know the details of how it occurred. That in
9 connection with this case, I spoke with Detective Sandell of the
0 Portland Police Department, in Portland, Multnomah County,
1 Oregon. That Detective Sandell told me that on October 29, 1987,
2 he was on stake-out duty parked directly across the street from a
3 second-hand store known as Mike The Traders located at 401 South
4 West Alder Street in Portland, Multnomah County, Oregon. That
5 Detective Sandell told me that the business in a second-hand
6 store dealing in large amounts of jewelry. That Detective
7 Sandell told me that at about 2:30 in the afternoon on October
8 29, 1987, he observed a white male adult who Detective Sandell
9 later identified as Charles Don also known as Charles Webb walk
0 into the store of Mike The Traders. That Detective Sandell told
1 me that approximately one minute later Mr. Don then left the
2 store in the company of the owner who Detective Sandell knows to
3 be Mike Vaden and another subject. That Detective Sandell told
4 me that these three subjects then walked next door to a restau-
5 rant known as O'Connors. That Detective Sandell told me that he
6 was able to observe through the front picture window of the
7 next-door restaurant the three subjects, that being Mike Vaden,
8 Charles Don also known as Webb and the other man sitting at a

1. table. That Detective Sandell observed the three to talk for
2 some time and then observed Mike Vaden to come out of the restau-
3 rant carrying what Detective Sandell observed to be a clear
4 plastic bag approximately 5" by 8" in size bulging with what
5 appeared to gold items. That Detective Sandell told me that Mike
6 Vaden then entered into his store and stayed approximately one
7 minute. That Detective Sandell told me that he then observed
8 Mike Vaden come back out of this store and join the other two
9 subjects again in the restaurant. That Detective Sandell told me
10 that approximately ten minutes later Mike Vaden came out of the
11 restaurant and went back into his store, again staying approxi-
12 mately one minute. That Detective Sandell told me that Mr. Vaden
13 then exited his store, went back into the restaurant carrying a
14 piece of white paper. That Detective Sandell told me that he
15 observed Mr. Vaden place this piece of white paper in front of
16 Mr. Don upon his arrival back inside the restaurant. That
17 Detective Sandell told me that the three gentlemen stayed inside
18 the restaurant for approximately ten more minutes and was unable
19 to see any other items pass back and forth among the subjects.
20 That Detective Sandell told me that he did notice that after
21 about ten minutes of conversation that Mr. Don, also known as
22 Webb, left the restaurant and walked westbound on the street away
23 from the restaurant. That shortly thereafter Mr. Vaden and the
24 third subject left the restaurant and went back into Mr. Vaden's
25 store. That Detective Sandell told me that he never observed the
26 sack of gold after he saw Mr. Vaden go from the restaurant away
27 from Mr. Don also known as Webb, into Mike The Traders. Detec-
28 tive Sandell told me that he then followed Charles Don, also

1 known as Webb, a short distance where he observed Mr. Don get
2 into a Cadillac vehicle operated by a white male adult who
3 Detective Sandell later identified as being John Humphries.

4 That Detective Sandell told me that Mr. Don and Mr.
5 Humphries were stopped by a uniformed traffic officer in the City
6 of Portland for a minor traffic violation a short distance from
7 where Mr. Sandell has observed Mr. Don get into the vehicle
8 driven by Mr. Humphries. That Mr. Don, also known as Webb, and
9 Mr. Humphries were subsequently arrested for the jewelry theft in
10 Salt Lake City.

11 That in talking with Detective Jackson of the Salt Lake City
12 Police Department, Detective Jackson told me that Mr. Martindale
13 stated that the only jewelry that Mr. Martindale, Mr. Don and Mr.
14 Humphries were in possession of when they reached Portland,
15 Oregon, was that jewelry that was stolen from John Nuich Jewelers
16 in the early morning hours of October 29, 1987.

17 That Detective Jackson has informed me that he believes that
18 Russell Martindale has been truthful and reliable in the informa-
19 tion that he related to Detective Jackson concerning the burglary
20 of John Nuich Jewelers and he dealings with Mr. Don and Mr.
21 Humphries and including Mr. Don and Mr. Humphries leaving the
22 motel room in Portland for the stated purpose of selling the
23 stolen rings.

24 That I believe Detective Jackson and Detective Sandell to be
25 truthful and reliable in the information that they have related
26 to me.

27 That Detective Sandell told me that he is familiar with the
28 business known as Mike The Traders from his past experience as a

Medford, Oregon 97501

1 police officer. That Detective Sandell told me that from his
2 experience it is highly likely that the items of jewelry that he
3 observed in Mike Vaden's hand on October 29, 1987, will still be
4 in Mr. Vaden's business and be on display for sale. That detec-
5 tive Sandell told me that he personally knows that Mr. Vaden shop
6 deals in a large amount of jewelry items and that the jewelry
7 items that Mr. Vaden deals with are generally put on display as
8 is and sold as is.

9 That in talking with Mr. John Nuich, the victim, in this
10 case, I've discovered that the total value of the rings that were
11 stolen from his business totals approximately \$19,000.00.

12 That based upon the above and foregoing, I hereby pray for a
13 warrant to issue to search that certain premises known as Mike
14 The Traders Second Hand Store located at 401 South West Alder
15 Street in Portland, Multnomah County, Oregon, owned and operated
16 by Mike Vaden for those rings that are listed on Exhibit A
17 attached, and an order to seize the said within described stolen
18 property if found.

19
20 Larry Johnson

21 SUBSCRIBED AND SWORN TO before me this _____ day of
22 November, 1987.

23 District Court Judge
24
25
26
27
28

TAPE 87-2413

DIRECT EXAMINATION

Q: Please state your name for the record.

A: Russell T. Martindale.

Q: Mr. Martindale, during October of 1987 where did you reside?

A: 438 East Wasatch, Midvale.

Q: Mr. Martindale, are you comfortable proceeding without the presence or advise of counsel?

A: No.

JUDGE: I guess we have to find out if you want to have an attorney.

A: Yes I would like an attorney.

JUDGE: I think that's all we can do then. Exercise your right to counsel _____ suspend the hearings.

RM: Thank you.

(COURT CONTINUES HEARING UNTIL THE 8TH OF DECEMBER.)

PERMISSION TO SEARCH

I, RENÉE GREGGSEN, have been informed by DET. JACKSON and DET. DALLING

who made proper identification as (an) authorized law enforcement officer(s) of the SALT LAKE SALT LAKE CITY Police Department, ~~Utah~~, Utah, of my CONSTITUTIONAL RIGHT not to have a search made of the premises and property owned by me and/or under my care, custody and control, without a search warrant.

Knowing of my lawful right to refuse to consent to such a search, I willingly give my permission to the above named officer(s) to conduct a complete search of the premises and property, including all buildings and vehicles, both inside and outside of the property located at 111 W. WASATCH APT #111. The above said officer(s) further have my permission to take from my premises and property, any letters, papers, or any other property or things which they desire as evidence for criminal prosecution in the case or cases under investigation.

This written permission to search without a search warrant given by me to the above officer(s) voluntarily and without any threats or promises of any kind, at 7:00 A.M. on this 4th day of April 1987 at 111 W. WASATCH.

Signed Renée Greggson

Witness: [Signature]

Witness: [Signature]

Address [Signature]

Address [Signature]

Phone (H) _____

(B) _____

Phone (H) _____

(B) _____

LINDA J. KNIGHT, C.G.A.



CERTIFIED GRAPHOANALYST
39 NORTH VILLAGE WAY
FRUIT HEIGHTS, UTAH 84037

February 16, 1988

Name Comparison Report For Carolyn Gregeresen

To be sure that the name Carolyn signed in front of me was her true unaltered signature. I asked her to bring several documents, signed several months ago. When we met I compared these to the ones signed in front of me. I was satisfied this was Carolyn's true signature.

Next I took these signature home and compared them to the signature on the "Permission To Search Document". The following are my findings:

1. First we will look at the name Renee. The capital R in both documents are completely different. Questioned "r" is very suppressed and scrunched with an open top, while the other is open and rounded with a small loop in the middle, the top is closed. The rest of the name is very similar except all of the names signed by Carol (in front of me) have a closed "e" throughout the signature of Renee. The questioned name has several open "e's" in the name. The last being a very sharp closed "e".

2. Next we will study the last name of Gregeresen. Both capital "G's" at first glance look similar, but there is a very marked difference. Carol's "g" always comes up to a sharp point then down to form a point. Continue on up to form a large loop at the top right side and smoothly down to form a point on the left side and in some cases a large loop, then across the "g" and into the rest of the name.

The questioned "G" comes up into almost a point then down and up into a very sharp point and then down not crossing the "g's" bottom into the rest of the name. No large loops occur in the questioned "g".

The next letter, Carol's "r" is very sharp while the questioned "r" is rounded. Again Carol's "e's" are closed while the questioned ones are open.

The next letter "g" in Carol's "g" they are closed at the top while questioned "g" is opened at the top.

Next letter "e" is closed in Carol's name and opened in questioned name.

The next "r" is sharp in Carol's name and rounded in questioned name.

The next "s" is soft and round in Carol's name and taller and sharper in the questioned name. Without question in all the names signed earlier by Carolyn and the ones I saw her sign her "s's" were always soft and almost laying down on the line.

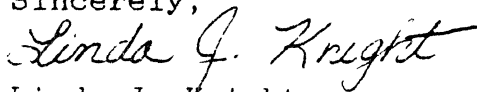
The next "e" is the same.

The next letter "n" looks the same, but there is a slight difference. Carol's "n" is very scrunched down and sometimes a sharp point occurs. The questioned name is taller, more rounded and tilted down at an angle. The top of Carol's "n" does not come up near as tall and curved as the "n" in the questioned name.

From close examination of the names signed in front of me and the name Carolyn allegedly signed. It is my conclusion that there are distinct differences in these two signatures.

My opinion as a Certified Graphoanalysis, is I do not feel the questioned Search Agreement was signed by Carol Gregersen.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Knight". The signature is written in dark ink and is positioned above the typed name.

Linda J. Knight

THIRD JUDICIAL DISTRICT
County of Salt Lake - State of Utah

FILE NO. CR 87-1572

E: (✓ PARTIES PRESENT)

COUNSEL: (✓ COUNSEL PRESENT)

State

James Cape

Lumpkin, Webb,
Johnson

Brooke Wells
Ray Stoddard

CLERK

REPORTER

BAILIFF

HON.

DATE:

J. Sowmya

May 23, 1988

JUDGE

5/20/88 heard defendants re-newed
Motion to suppress Evidence

Motion is denied.

[Signature]

APPENDIX J.

Mail to counsel - mailed May 23, 1988

PAGE 1 OF 1

1ST TRIP (August)

- Russ, Chuck, Renee & Baby went to Twin Falls, ID
- They were there 4 days
- When they came back, Britt saw Renee with gold chains & some papers.
- Russ told Britt he went into the TWIN FALLS JEWELERS and took a box from on top of the safe

2ND TRIP (Last of August - First part of Sept.)

- Chuck & Russ left for approx 3 wks.
- When they came back, Russ told Renee he had robbed a jewelry store.
- Russ said he had a toy gun, robbed the jewelry store and hid in the trunk of Chuck's car

3RD TRIP (After S.L. robbery)

- Chuck, Russ, and Humphrey left S.L. and drove to L.V. where Chuck got rid of the jewelry
- Went to Stockton, then to Portland where Russ called his Dad to pick him up.
- Russ told her he had met "Dougie" around

To whom it may ^{'''}concern:

I am an ex-convict who does not believe in what Russ and Britt Martindale are doing to Renee Gaegeren and Charles Webb over the robbery at Kings jewelry store at trolley square. Russ and Britt Martindale are using Renee and Chuck to get Russ Martindale off robberies he has done and also get him off of the robbery at Kings jewelry store.

This is what happened. On Oct. 19th 87 Russ took a car from a car lot for a test drive, and took it back the same day the 19th and told the man at the car lot he would be back the 20th of Oct to look it over again. And on the 20th of Oct Russ took the car for a test drive again. This time Russ kept the car.

and Russ ⁽²⁾ got some licence
plates to use on the car, ~~and~~
so Russ, Myself & Britt using
my Cadillac Seville, we all went
down to rob Kings Jewellery on the
20th of Oct. But there were 3 men
working in the store that day
of Oct 20th. I will also say
that Britt Martindale got us
the shotgun from one of her
friends that buys drugs from
Britt. We went back over to
set things up again for the 21st
of Oct. And this is what happened
at Kings Jewellery store on Oct 21st
87. I went in Kings with a
sawed off shot gun, a 12 gauge,
and took rings from the cabinet
and everything from the shelf. And
the guard came in and I made
him use his hand cuffs to cuff
him and the owner of the store
together and I took the hand
cuff keys and left the store, and
went out to where Russ was &

(3)

was waiting for me in the car he took from the car lot on Oct. 20th and Russ Martindale drove us away from the robbery over to our meeting place where Britt Martindale was waiting for us in my Cadillac. Then we went over to Britt and Russ Martindale's house in midvale we all went in the house and Britt went in the bed room and got a blanket off her bed and she went out to the car and covered the bags of jewelry with the blanket and brought it in the house. We then took it in the bedrooms and went through it. Britt said she wanted to keep a diamond watch and one ring, Russ said she could so she did. I then went in and shaved off my beard, and Russ and Britt and myself put all the ring boxes and the cash

box and things⁽⁴⁾ we did not want in a ~~box~~ white canvas bag with a brown strap on it. And Russ and I took it and the shot-gun put them in the river at 106th So., That is where you will find it. And the shot gun is in the river, it is silver and has a wooden stock and is a pump shot gun.

I will also say Renee would not let Butch use her shot gun that she kept in her house for safty.

Then Russ, John, and I left Salt Lake City, and went to Las Vegas in my Cad. When we got to ~~Las Vegas~~ Las Vegas Russ called Chuck Webb and asked him if he could help him sell some gold. Chuck just told Russ to go to a 24 hr. pawn shop, so Russ did and sold a wedding set and some diamonds. I kept most of the jewelry and told 2

(3)

Russ I would meet him in Stockton Calif. Russ and I was going to do a robbery in Stockton and Britt knew about it also, so I went to Oregon, we did a jewelry store in Oregon, Russ and myself, then we went to Portland and we needed some money, so Russ called Chuck at the motel he was at, and told him he had some rings, and if Chuck would buy them for 1,000.⁰⁰ Russ sold the rings to Chuck in Portland. Not the rings from Kings store, but the ones we got in Oregon. I left Russ there.

I called Britt in ~~UT~~ Utah on the 6th of November. She laughed and told me what she was doing to Chuck and Renee and using them to get Russ out every thing ~~that~~ Russ did. Britt even said she sold Chuck ~~and~~ the diamond watch and ring.

(6)

she kept from the robbery at King's jewelry.

I am a ex-con and I do not believe in putting two innocent people in prison and setting them up like Butts and Russ did to Chuck and Renee.

I hope your paper will print this statement, because Renee ~~and~~ Gregersen and Charles Webb are innocent of any thing to ~~do~~ do with King's Jewelry. For my self I will get away, Butts and Russ do not know me that well.

Under Penalty of ~~Perjury~~ Perjury the information contained therein is true and correct

X-CON

Copies sent to:

Renee Gregersen

Co. Att. Office

T.V. 5 news

Deseret News

SALT LAKE TRIBUNE

1 IT THROUGHOUT THIS STATE. IT IS AN AWESOME RESPONSIBILITY
2 TO SIT IN JUDGMENT OF ANOTHER HUMAN BEING, BUT IT IS SOME-
3 THING THAT YOU CAN DO AND YOU WILL DO AND THE JUDGE HAS
4 INSTRUCTED THAT YOU MUST DO. YOU ARE THE ONLY PEOPLE IN
5 THE WORLD WHO CAN DECIDE WHAT REALLY HAPPENED IN THIS CASE.

6 ABOUT 20 YEARS AGO I WORKED AT AN OTHERWISE UNKNOWN
7 EATING ESTABLISHMENT CALLED ALI BABA'S KABOB HUT. PAUL, WHO
8 WAS THE BOSS -- WE CALLED HIM ALI BABA. HE HAD A PRECOCIOUS
9 THREE-YEAR-OLD SON WHO HAD BEEN TAUGHT VERY BUSINESSLIKE
10 PHRASES BY HIS FATHER AND ONE DAY ANNOUNCED TO ME THAT THE
11 WAY TO GET RICH WAS TO BUY CHEAP AND SELL FOR A PROFIT.
12 THAT IS AN APHORISM, I SUPPOSE, THAT ANY BUSINESSMAN COULD
13 VOUCH FOR THE TRUTH OF.

14 WE HAVE IN THIS CASE A PERSON THAT REPRESENTS HIM-
15 SELF TO YOU AS MR. WEBB AS A BUSINESSMAN. HE DEALS IN
16 SECONDHAND GOLD AND OTHER JEWELRY. AS STATES EXHIBITS 42
17 AND 43 SHOW TO US, AND AS HE ADMITTED ON THE STAND, HE DOES
18 SUBSTANTIAL TRAVELING IN THE PURSUIT OF THIS BUSINESS. MR.
19 WEBB ONE DAY, WHEN EXACTLY WE DON'T KNOW, BUT CERTAINLY AFTER
20 THE JANUARY BIRTH OF HIS AND RENAE GREGENSEN'S TWINS, CAME
21 INTO CONTACT WITH A YOUNG MAN NAMED MARTINDALE AND IT APPEARS
22 FROM MR. MARTINDALE'S TESTIMONY THAT HE SOMETIMES WENT WITH
23 MR. WEBB TRAVELING. HE TESTIFIED THAT ON ONE OF THESE
24 OCCASIONS HE AND MR. WEBB BROUGHT MR. HUMPHREY BACK DOWN
25 TO SALT LAKE CITY. IT IS INTERESTING TO NOTE THAT ALTHOUGH

1 'THERE ARE MANY, MANY RECORDS OF COLLECT TELEPHONE CALLS,
2 WHICH WERE MADE BY MR. WEBB AND HE HAS ADMITTED DURING HIS
3 TESTIMONY, DURING THE MONTH OF OCTOBER THERE'S NO COLLECT
4 TELEPHONE CALLS MADE FOR THE LATTER PART OF OCTOBER, THIS
5 DOESN'T PROVE ANYTHING, DOES IT? WHEN YOU COUPLE IT WITH
6 SOME OTHER CIRCUMSTANCES IT BEGINS TO TELL US SOMETHING.
7 WHY WOULD A MAN, WHO IS TRAVELING IN ELY AND EVERY PLACE
8 ELSE, NOT CONTINUE THE SAME PATTERN THAT HE'S ESTABLISHED
9 THROUGHOUT SEVERAL WEEKS PRIOR TO THAT OF CALLING TO CHECK
10 ON HIS BABY, CHECK WITH HIS GIRLFRIEND, RENAEE GREGERSEN?
11 THE STATE SUGGESTS THAT THE CIRCUMSTANCES AND THE TESTIMONY
12 OF MR. MARTINDALE AND MRS. MARTINDALE SHOW THERE ARE NO
13 PHONE CALLS BETWEEN THE 13TH OF OCTOBER AND 26TH OR 27TH
14 OF OCTOBER, BECAUSE HE WAS IN TOWN. HE WAS IN TOWN CONDUCT-
15 ING SOME BUSINESS WITH MR. MARTINDALE AND WITH MR. HUMPHREY.
16 THAT BUSINESS INVOLVED A JEWELRY STORE. APPARENTLY THERE
17 WAS SOME TALK ABOUT WHAT JEWELRY STORE IT WAS GOING TO BE
18 BEFOREHAND. MS. MARTINDALE ACKNOWLEDGED THAT, AND MR.
19 MARTINDALE ACKNOWLEDGED THAT, BUT THINGS HADN'T FIRMED UP.
20 MR. MARTINDALE WAS GIVEN AN ASSIGNMENT, GETTING A CAR. HE
21 DID SO. THAT WAS THE CAR FOR WHICH HE WAS GRANTED IMMUNITY
22 FOR HIS TESTIMONY, BUT I WOULD LIKE TO DIVERT HERE JUST A
23 MINUTE. DO YOU RECALL DURING HER OPENING STATEMENT, MS.
24 WELLS TALKED FOR A LONG TIME ABOUT THIS GRANT OF IMMUNITY AND
25 HOW A PERSON WHO HAD SUCH A GRANT COULD DO WHATEVER THEY

1 WANT TO DO. WHAT A TERRIBLE THING IT WAS GOING TO BE TO TRY
2 TO ASCERTAIN THE TRUTH WITH THIS GRANT OF IMMUNITY. REMEMBER
3 THAT MS. WELLS WAS THE PERSON WHO CALLED MR. MARTINDALE TO
4 THE STAND. MR. MARTINDALE WAS A DEFENSE WITNESS, A DEFENSE
5 WITNESS, AND SHE DOESN'T ASK HIM VERY MANY QUESTIONS ABOUT
6 THINGS HE COULD, PERHAPS, ENLIGHTEN US ON. SHE WANTS TO
7 KNOW SOME QUESTIONS ABOUT THINGS THAT SHE TOLD THE POLICE
8 ON THE 11TH OF NOVEMBER, ONLY THE 11TH OF NOVEMBER. SHE
9 DOESN'T WANT TO KNOW ABOUT WHAT HE TOLD THEM ON THE 13TH OF
10 NOVEMBER, ONLY THE 11TH. SHE GETS HIM TO ADMIT THAT HE
11 PROBABLY SIGNED THE PAWN SLIP THAT IS, I BELIEVE, NO. 37, OR
12 WHATEVER, IN EVIDENCE. IT IS SIGNIFICANT THAT THE DEFENSE
13 CALLED MR. MARTINDALE AT THE PRELIMINARY HEARING, AND HE
14 REFUSED TO TESTIFY. MR. MARTINDALE, APPARENTLY, HAS ALWAYS
15 BEEN A DEFENSE WITNESS BUT AS HIS DEMEANOR ON THE STAND
16 SHOWS, I WOULD INDICATE HE WAS VERY RELUCTANT. WHY IS HE
17 RELUCTANT? WELL, CERTAINLY NOT FROM THE QUESTIONS ASKED.
18 HE IS SCARED. HE KNOWS THAT IF HE GETS ASKED CERTAIN QUES-
19 TIONS NOW THAT HE HAS A GRANT OF IMMUNITY. HE HAS TO ANSWER
20 THEM. HE IS WORRIED WHAT KINDS OF QUESTIONS MAY BE ASKED.
21 MAYBE THE GRANT OF IMMUNITY DOESN'T EXTEND AS WE READ IT TO
22 HIM. HE ACKNOWLEDGED THE GRANT OF IMMUNITY DOESN'T EXTEND
23 BEYOND THAT SMALL TIME FRAME AND IT DOESN'T EXTEND BEYOND
24 THE BORDERS OF THE STATE OF UTAH. THAT'S WHY HE IS BEING
25 SO CIRCUMSPECT, BUT HE DID ANSWER ALL THE QUESTIONS HE WAS

1 .ASKED AND ALL THE QUESTIONS THAT HE WAS ASKED WHICH WERE
2 QUITE OBVIOUSLY ATTEMPTS TO GET HIM TO SAY HE MIGHT HAVE SAID
3 SOMETHING DIFFERENT ON THE 11TH THAN HE DID ON THE 13TH.
4 ALL THE QUESTIONS THAT HE WAS ASKED IMPLICATE MR. HUMPHREY
5 AND MR. WEBB, ALL OF THEM, AND HIMSELF, TOO, AND HIMSELF.
6 SO WHERE WAS HIS ADVANTAGE TO GETTING A GRANT OF IMMUNITY?
7 WHERE WAS DEFENSE'S ADVANTAGE OF CALLING MR. MARTINDALE AS
8 A DEFENSE WITNESS?

9 YES, IT IS TRUE THE GRANT OF IMMUNITY WAS PROCURED
10 BY THE COUNTY ATTORNEY. MR. YOCOM IS THE ONLY PERSON IN
11 THE COUNTY WHO CAN GIVE SUCH A GRANT. WHY? BECAUSE HE
12 WAS SUBPOENAED BY THE DEFENSE AND THERE'S NO POINT IN HAVING
13 HIM TAKE THE STAND AND CLAIM HIS FIFTH AMENDMENT PRIVILEGES.
14 AGAIN, IF HE HAS SOMETHING TO SAY LET'S HEAR IT. SO HE
15 ANSWERED THE QUESTIONS, MIGHT NOT HAVE BEEN A VERY GOOD
16 WITNESS, BUT WHAT HE HAD TO SAY WAS TRUE.

17 WITNESSES TO CRIMES ARE SORT OF LIKE RELATIVES.
18 IF THEY HAPPEN TO BE THERE YOU TAKE THEM, WARTS AND ALL.
19 YOU CAN'T CHOOSE YOUR WITNESSES ANY MORE THAN YOU CAN CHOOSE
20 YOUR RELATIVES. AND THE STATE IS PLEASED WITH SOME OF THE
21 THINGS THAT MR. MARTINDALE REPRESENTED, NOT PLEASED WITH
22 SOME OF THE THINGS THAT HE REPRESENTED, BUT THERE HE IS,
23 OPENED UP JUST AS EFFECTIVELY AS ANYBODY ELSE, THE GOOD,
24 THE BAD, THE UGLY, WHATEVER THERE IS, BUT IT IS SOMETHING
25 THAT THIS DEFENSE WITNESS IS CONSISTENT WITH, WHAT THE

1 WALK AROUND IT IN THE JURY ROOM, AND YOU WILL SEE THAT IT
2 HAS A SILVERY BARREL, JUST THE SAME AS IT HAS A BLUED BARREL.
3 WHAT IS IT? ARE WE GETTING HUNG UP ON THE BUGABOO OF THE
4 DESCRIPTION? AGAIN, NO, HE DOESN'T SEE MUCH OF THE GUN.
5 HE WAS LOOKING AT THE BUSINESS END OF IT. HE ACKNOWLEDGED
6 WHEN IT CAME TO IDENTIFYING WHO IT WAS, HE HAD NO DOUBT IN
7 HIS MIND THAT'S THE MAN. MR. CHURCH, LIKEWISE, DIDN'T HAVE
8 AS MUCH OF AN OPPORTUNITY TO OBSERVE THE FACE, BUT THERE'S
9 NO DOUBT IN HIS MIND EITHER. HE HAS AN ADDITIONAL DIS-
10 TRACTION, PERHAPS, BECAUSE HE SEES A LITTLE BIT MORE OF THE GUN.
11 HE KNOWS SOMETHING ABOUT GUNS, THE SIGNIFICANCE OF THE
12 WEAPON, MAYBE HIS ABILITY TO IDENTIFY SOME OF THE OTHER
13 THINGS IMPEDED HIS ABILITY TO IDENTIFY SOME OF THE THINGS
14 THAT WERE GOING ON AT THE TIME. HE HAS, ALSO, NO
15 DOUBT WHEN HE IDENTIFIES THIS MAN. HE IS ABLE TO IDENTIFY
16 THE WEAPON AS BEING EXACTLY THE SAME AS WHAT HE SAW HELD
17 IN THE DIRECTION OF HIS BODY ON THE 21ST OF OCTOBER. MS.
18 MARTINDALE, WHERE IN THE WORLD DID SHE GET ALL THOSE DETAILS
19 ABOUT THAT? WHERE DID SHE GET ALL THOSE DETAILS. THE KEY
20 TO THE HANDCUFFS, THE CARVED OPAL, WHICH IS NOT IN EVIDENCE,
21 APPARENTLY NEVER RECOVERED. THE BROKEN WATCH, THE RINGS,
22 THE RING BOX. YOU KNOW, IF SHE WERE MAKING UP A STORY OR
23 SHE HAD REALLY SEEN THE BOXES, DON'T YOU THINK SHE WOULD
24 KNOW SOMETHING MORE ABOUT WHERE EXACTLY THE SACK CAME FROM?
25 ALL SHE COULD REMEMBER IS A WRITING LIKE TROLLEY SQUARE.

1 MAYBE WE SHOULD TAKE A POLL AND FIND OUT HOW MUCH
2 LONGER I HAVE. I WOULD LIKE TO SAY A FEW WORDS ABOUT
3 REASONABLE DOUBT. REASONABLE DOUBT DOES NOT MEAN BEYOND
4 A SHADOW OF A DOUBT. JUST READ THE DEFINITION THE JUDGE,
5 I BELIEVE, IS GOING TO SEND WITH YOU TO THE COURTROOM --
6 INTO THE DELIBERATIONS ROOM WITH YOU. REASONABLE DOUBT
7 IS SOMETHING THAT HAS TO BE BASED ON REASON, HAS TO BE BASED
8 ON THE EVIDENCE OR LACK OF EVIDENCE. IT IS NOT SOMETHING
9 EPHEMERAL, NOT SOMETHING MADE UP. IT IS NOT SOMETHING
10 MYSTIFYING. WE ARE NEVER IN THIS WORLD ABLE TO PROVE ANY-
11 THING BEYOND ALL DOUBT OR BEYOND A SHADOW OF A DOUBT. EVERY
12 HUMAN ACTIVITY IS SUBJECT TO SOME DOUBT. WHEN YOU BUY A
13 HOUSE YOU DON'T KNOW THAT IT'S GOING TO BE A WONDERFUL HOUSE
14 FOR THE 40 YEARS YOU ARE GOING TO LIVE IN IT. YOU CHECK AS
15 BEST YOU CAN TO MAKE SURE IT IS NOT INFESTED WITH TERMITES.
16 YOU HAVE A TITLE SEARCH DONE TO MAKE SURE YOU ARE GOING TO
17 OWN THE PROPERTY OF GROUND THAT IS ON THERE. YOU MAKE SURE
18 THAT THE COOLER WORKS ON A DAY LIKE THAT. MAKE SURE THAT
19 THE WATER RUNS WITHOUT BEING MILKY OR RUSTY COLOR. YOU DO
20 A LOT OF THINGS, BUT WHEN IT COMES RIGHT DOWN TO IT, AND
21 YOU BUY THE HOUSE, WE ALL UNDERSTAND THAT THERE IS NOT
22 EVERYTHING DONE AND NAILED IN PLACE, THINGS COULD GO WRONG,
23 BUT YOU BUY A HOUSE AFTER CHECKING IT OUT AS CAREFULLY YOU
24 CAN, YOU HAVE EXERCISED SOMETHING IN YOU WHICH RECOGNIZES
25 WHEN IT'S POSSIBLE TO MAKE A DECISION BEYOND A REASONABLE

1 'BY THE WAY, HANDWRITING LOOKS VERY SIMILAR TO THE HANDWRITING
2 ON THE ONE THAT WAS SIGNED BY RUSS MARTINDALE, MIGHT MEAN
3 SOMETHING, MIGHT NOT MEAN SOMETHING.

4 WHO HAS A REASON? WHO HAS THE BEST AND BIGGEST
5 REASON FOR FABRICATING IN THIS CASE? WELL, THE DEFENSE
6 SAID, IN THEIR OPENING STATEMENT, THEY WERE GOING TO SHOW
7 THAT BRITT MARTINDALE HAD A GOOD REASON TO DO IT. EVIDENCE
8 DOESN'T SHOW ANY REASON FOR HER TO DO THAT. HER HUSBAND IS
9 IN ENOUGH TROUBLE. SHE CERTAINLY IS NOT GOING TO GET HIM
10 OUT OF IT BY TESTIFYING IN THIS CASE -- OR, BY TESTIFYING
11 FALSELY IN THIS CASE. IT IS PRETTY APPARENT THAT BRITT
12 MARTINDALE SAW THE ACTUAL PROCEEDS OF THE ROBBERY. THERE'S
13 TOO MANY DETAILS THAT SHE IS AWARE OF FOR THAT NOT TO BE THE
14 CASE, THE CANADIAN MONEY, THE SALES RECEIPTS, THE DIAMOND
15 SAFE, THE MONEY BOX, THE WATCH, THE BAG, THE WEAPON. SHE
16 SAID THAT STATE'S EXHIBIT 1 IS JUST LIKE THE WEAPON SHE
17 TOOK INTO HER CUSTODY AND PUT IN HER KITCHEN. THERE AREN'T
18 ANY MAJOR DISCREPANCIES IN ANY OF THE WITNESSES' STORIES
19 WHO TESTIFIED FOR THE PROSECUTION. THERE ARE A NUMBER OF
20 DEFENSE WITNESSES WHO TESTIFIED ABOUT THINGS THAT HELPED
21 THE PROSECUTION, AS WELL. THE ONLY PEOPLE WHO HAVE A MOTIVE
22 TO FABRICATE, HAVE A REASON TO FABRICATE, HAVE TIME TO
23 FABRICATE, ARE THESE TWO GENTLEMEN HERE, THE GENTLEMAN IN
24 THE RED SHIRT AND THE GENTLEMAN IN THE WHITE SHIRT. THEY
25 HAVE PUT TOGETHER A PRETTY DECENT STORY. UNFORTUNATELY,

1 'WHEN YOU START EXAMINING THE COMMON SENSE, IT FALLS APART.
2 MR. HUMPHREY SAYS, FOR EXAMPLE, HE SHOWS UP UN-
3 INVITED, PERHAPS UNEXPECTED, EVEN AT RENAEE GREGERSEN'S
4 HOUSE, TO LOOK FOR HIS GOOD BUDDY WHO HE'S MET IN THE SOUP
5 KITCHEN AT BALONEY JOE'S UP IN PORTLAND ON SEVERAL PREVIOUS
6 OCCASIONS. HE CAME DOWN BECAUSE CHARLES WEBB INVITED HIM TO
7 COME DOWN AND HAVE A VACATION. ACCORDING TO MR. HUMPHREY,
8 LIVING ON THE STREET AND WORKING IN A SOUP KITCHEN IS NOT
9 HIS IDEA OF A GOOD TIME, SO WHY NOT TAKE HIM UP ON THE
10 INVITATION? HE SHOWS UP. RENAEE SAYS YOU CAN'T STAY HERE,
11 CHUCK IS GONE AND MY KID IS SICK, SO I WILL CALL UP MY FRIEND,
12 BRITT MARTINDALE, AND SHE WILL TAKE YOU. SO HE GOES OVER TO
13 BRITT'S ON THE 17TH OF OCTOBER, HE SAYS, AND HE SITS THERE
14 FOR FOUR DAYS AND HE WATCHES TELEVISION. HE DOESN'T GO
15 ANYWHERE, AND HE TENDS THE KIDS AND THAT'S ALL HE DOES,
16 AND SUDDENLY THE AFTERNOON OF THE 21ST OF OCTOBER BRITT AND
17 HER HUSBAND JUST DISAPPEAR AND ASK HIM TO TEND THE KIDS,
18 FOUR KIDS UNDER THE AGE OF FOUR. HE IS GOING TO TEND THEM
19 AND THEY ARE GONE FOR A COUPLE HOURS. WHEN THEY COME BACK,
20 THERE IS ANOTHER GUY IN A LATE SEVENTIES CADILLAC. HE FINDS
21 THE GUY'S FIRST NAME OUT. ESSENTIALLY, HE REALLY DOESN'T
22 KNOW WHAT IS GOING ON. HE SEES THEM RUN INTO THE BEDROOM
23 WITH SOMETHING COVERED UP IN A BLANKET. THEN THEY ARE IN
24 THE BEDROOM WHILE HE IS STUCK THROUGHOUT WITH THE FOUR KIDS,
25 PRESUMABLY, AND THEN THEY COME OUT LATER AND HE NEVER SEES

1 ANYTHING. WELL, A LITTLE LATER ON HIS TESTIMONY, SUDDENLY
2 HE REMEMBERS THAT HE SAW THE BAG, THE RED BAG, AND HE SAW
3 SOME JEWELS, BUT THE FIRST TIME THROUGH THE STORY HE DIDN'T
4 SEE NOTHING. HE JUST SAW THE BLANKET AND THEN ARRANGEMENTS
5 WERE MADE FOR THIS FELLOW THAT HE DOESN'T KNOW, WHOSE FIRST
6 NAME IS -- AND I'LL NEVER EVER FIND OUT WHO MIGHT HAVE BEEN
7 FROM AROUND FRESNO, CALIFORNIA, AND THESE MEN SIT IN A
8 CAR, RUSS MARTINDALE AND THIS UNKNOWN DRIVER, AND MR.
9 HUMPHREY, AND THEY GO DOWN TO LAS VEGAS BECAUSE HE THINKS
10 HE MIGHT HAVE HEARD THAT MR. WEBB WAS DOWN THERE. AND YOU
11 GO TO THE SAHARA AND ASK THEM TO PAGE MR. WEBB. YOU DON'T
12 EVEN KNOW WHETHER HE IS IN TOWN OR NOT. HIS WIFE HASN'T
13 BEEN GETTING ANY COLLECT CALLS FOR A WHILE OR HIS GIRLFRIEND.
14 SURE ENOUGH, HE SHOWS UP AND YOU GO AND YOU HELP RUSS
15 MARTINDALE PAWN SOME STUFF. YOU CAN'T REMEMBER WHETHER YOU
16 SAW MR. WEBB PAWN ANYTHING OR NOT BECAUSE YOU SPLIT UP.
17 SOMETIMES YOU STAY THERE TOGETHER FOR THREE OR FOUR DAYS,
18 THEN YOU MOVE ON TO CALIFORNIA AND MOVE UP TO PORTLAND. IN
19 PORTLAND RUSS MARTINDALE SPLITS OFF. HE'S GOING SOMEWHERE
20 BUT HE IS NOT GOING WITH YOU, SO INSTEAD OF STAYING IN
21 PORTLAND WHERE HE HAD HIS HOME WHERE BALONEY JOE'S WAS,
22 MR. HUMPHREY GOES WITH MR. WEBB AND THEY HIGH-TAIL IT
23 BACK TO UTAH. THEY GET HERE ABOUT THE 1ST OF NOVEMBER AND
24 NOTHING HAPPENS AGAIN FOR ABOUT FOUR DAYS, UNTIL THEY ARE
25 ARRESTED ON THE 4TH.

1 WELL, BRITT MARTINDALE SAYS SOMETHING ELSE DID
2 HAPPEN. SHE SAID MR. HUMPHREY WAS SITTING IN HER HOUSE.
3 WHAT HE WAS DOING THERE AND FOR WHAT, HE'S NEVER SAID, BUT
4 IF YOU HAD JUST LOST ONE-THIRD OF YOUR BUSINESS PARTNERSHIP
5 BECAUSE SOMEBODY DEFECTED AND WAS MAKING NOISES LIKE HE
6 WANTED OUT OF THE BUSINESS YOU WERE IN, WOULDN'T YOU WANT
7 TO KNOW WHERE HIS WIFE WAS AND WHAT SHE WAS DOING AND
8 WHETHER OR NOT THE HUSBAND WAS GOING TO CONTACT HER? AND
9 SO THE WIFE MAKES UP AN EXCUSE TO GET OUT OF THE HOUSE.
10 SHE LIES TO MR. HUMPHREY TO GET OUT OF THE HOUSE AND SHE
11 GOES TO THE POLICE AND SHE TELLS THEM EVERYTHING SHE KNOWS.

12 NOW, WE DON'T GET THOSE KINDS OF DETAILS ABOUT A
13 ROBBERY FROM READING THE NEWSPAPER OR WATCHING THE 6 O'CLOCK
14 OR 10 O'CLOCK NEWS. THE POLICE KNEW THAT THEY WERE
15 WATCHING -- THEY WERE LOOKING AT SOMEBODY OR TALKING TO
16 SOMEBODY AND KNEW WHAT HAD HAPPENED, SO THEY CONTACT HER
17 HUSBAND. HE GIVES THE STATEMENT ON THE 11TH, BUT HE'S
18 GUARDED IN THE STATEMENT AND WOULDN'T ADMIT TO EVERYTHING
19 THAT HE KNOWS. HE TRIES TO LIMIT THE POLICE. THEY DON'T
20 WANT TO BE LIMITED.

21 YOU KNOW, YOU LOOK AT THE SIZE OF THOSE STATEMENTS.
22 YOU SAW THEM ON CROSS-EXAMINATION AND DIRECT EXAMINATION OF
23 MR. MARTINDALE. WE ARE TALKING MULTIPLE PAGES. WE ARE NOT
24 TALKING FOUR OR FIVE PAGES. WE ARE TALKING 30 PAGES, 15
25 PAGES. THESE ARE SUBSTANTIAL STATEMENTS, AND WHAT DOES THE

1 DEFENSE HAVE TO CROSS-EXAMINE ABOUT THOSE STATEMENTS? ISN'T
2 IT TRUE THAT YOU SAID THAT BRITT WAS IN THE CAR WHEN THEY
3 CAME IN? MR. MARTINDALE APPARENTLY EXPLAINED, YES, I DID
4 TELL THE POLICE ABOUT THAT, BUT I WASN'T THERE. I WAS JUST
5 SAYING WHAT THE POLICE WANTED TO KNOW REGARDING WHAT I KNEW
6 ABOUT THE STORY. I TOLD THE POLICE I WASN'T THERE. I DIDN'T
7 SEE ANYBODY COMING IN THE CAR, BUT YOU DIDN'T SAY THAT YOU
8 TOLD THE POLICE THAT BRITT WAS IN THE CAR? FINALLY, ON
9 CROSS-EXAMINATION, WE GET UP. WE READ THE LINES THERE AND
10 SURE ENOUGH HE SAYS BRITT -- HE IMMEDIATELY CORRECTED HIM-
11 SELF AND SAID, I MEAN RENAE AND SO AND SO. HE TESTIFIED
12 UNDER OATH THAT HE WASN'T THERE. HE TOLD THE POLICE THAT
13 HE WASN'T THERE, BUT THAT'S ALL THAT DEFENSE COUNSEL COULD
14 FIND TO CROSS-EXAMINE HIM ON ON HIS POLICE STATEMENT AND
15 TWO PAGES. COULDN'T THEY HAVE FOUND SOMETHING MORE SUBSTAN-
16 TIAL?

17 THE COURT: YOU HAVE BEEN GOING 30 MINUTES.

18 MR. COPE: THANK YOU, YOUR HONOR. I GUESS NOW
19 I HAVE GONE OVER MY 30 MINUTES. YOU WILL HAVE LESS TIME
20 TO LISTEN TO ME WHEN I TALK TO YOU AGAIN. LADIES AND
21 GENTLEMEN OF THE JURY, THIS CASE IS NOT ABOUT A LOT OF
22 THINGS. IT IS NOT ABOUT REASONABLE DOUBT. THE WITNESSES
23 HAVE NO REASONABLE DOUBT. THIS CASE IS NOT ABOUT DESCRIP-
24 TIONS. THE WITNESSES DON'T HAVE TO DESCRIBE WHEN THEY
25 TESTIFY. THIS CASE IS ABOUT A ROBBERY, A BRUTALLY PULLED-

1 STRESS -- WOULD YOU HAVE REHEARSED EXACTLY WHAT IT WAS YOU
2 WERE GOING TO SAY FOR THE HOLD-UP? COMMON EXPERIENCE WOULD
3 SAY PROBABLY SO, PROBABLY YES.

4 HAVE A GOOD LOOK AT THAT COMPOSITE SKETCH THAT
5 WAS INTRODUCED BY THE DEFENSE AND COMPARE IT WITH THE 1986
6 PHOTOGRAPH AUTHENTICATED BY MR. HUMPHREY HIMSELF ABOUT WHAT
7 HE LOOKED LIKE WITH A BEARD ON, AN INCREDIBLY GOOD LIKENESS,
8 I WOULD SAY. NO LINE-UP. THERE WAS NO LINE-UP. OH, MY
9 GOODNESS, WE CAN'T HAVE A LINE-UP IF THE DEFENDANT DOESN'T
10 WANT TO PARTICIPATE IN ONE. AND IF WE HAVE ONE OR IF WE
11 SHOWED SOME PICTURES, THEN THE DEFENSE IS GOING TO SAY WE
12 SUGGESTED TO THESE PEOPLE WHAT THEY WERE SUPPOSED TO SAY,
13 SO WE ARE IN NO POSITION -- YES, THERE WAS NO LINE-UP, BUT
14 WHY DO WE NEED A LINE-UP WHEN YOU HAVE THE PEOPLE, WHEN YOU
15 HAVE THE EYEWITNESSES SAYING YES, THAT'S WHO IT WAS, WHEN
16 YOU HAVE A THIRD PARTY SAYING THESE PEOPLE PARTICIPATED IN
17 A ROBBERY THAT MY HUSBAND HELPED TO STAGE.

18 RUSS MARTINDALE WAS NOT ARGUMENTATIVE AND
19 SARCASTIC. HE WAS DEFENSIVE. HE WAS ANGRY AT HAVING BEEN
20 SUBPOENAED AND HAVING SAT THROUGHOUT ON THAT BENCH TWO DAYS
21 WAITING FOR MS. WELLS TO FINALLY CALL HIM AND ASK HIM SOME
22 QUESTIONS AND THEN SHOW HIM A DOCUMENT WITH HIS SIGNATURE
23 ON IT. YES, HE HEDGED. THAT LOOKS LIKE MY SIGNATURE.
24 I THINK IT WAS THE FIRST THING HE SAID, AND FINALLY, AFTER
25 A FEW MORE QUESTIONS, HE SAID, WELL, YEAH, I DO REMEMBER

1 'SIGNING SOMETHING. WHAT DIFFERENCE DOES IT MAKE? MR. WEBB,
2 MR. HUMPHREY, MR. MARTINDALE WERE ALL DOWN THERE IN LAS
3 VEGAS GETTING RID OF THE STOLEN PROPERTY. THAT'S WHAT THEY
4 WERE DOING. THEY ARE GOING TO DO IT -- SOME AT A PAWN SHOP,
5 SOME AT ANOTHER PAWN SHOP. MAYBE THEY WILL SELL SOME, WHO
6 KNOWS? SO WHAT? WHEN YOU HAVE A CRIME COMMITTED IN HELL,
7 YOU HAVE DEVILS FOR WITNESSES. MR. MARTINDALE IS DIRTY.
8 I DON'T KNOW WHY THE DEFENSE CALLED HIM, BUT THEY DID, AND
9 HE PROVIDED INFORMATION THAT WAS HELPFUL TO THE PROSECUTION.
10 WHY WOULD YOU MAKE UP A STORY ABOUT A DEAD HORSE? I MEAN,
11 THAT IS SOMETHING THAT IS RELATIVELY EASY TO PICK UP ON,
12 ISN'T IT? WHY THROW A DETAIL LIKE THAT INTO A STORY? WHY
13 THROW A STORY IN ABOUT RETURNING A VIDEO TAPE THAT IS
14 PRETTY EASY TO PICK UP ON, AND CHECK OUT, ISN'T IT? YOU
15 THROW THOSE KINDS OF DETAILS IN BECAUSE THEY HAPPEN TO BE
16 TRUE. MR. MARTINDALE KNEW DARN WELL WHAT HE WAS DOING.
17 HE KNEW THAT THE CAR THAT HE HAD STOLEN WAS GOING TO BE USED
18 TO DO A ROBBERY. HE JUST DIDN'T KNOW IT WAS GOING TO BE
19 KING'S CUSTOM JEWELER AT TROLLEY SQUARE. HE DIDN'T KNOW
20 IT WAS GOING TO BE AT 15:35 IN THE AFTERNOON. HE WAS
21 ANGRY AND UPSET. HE CAME BACK AND FOUND OUT THAT THEY USED
22 HIS KITCHEN TABLE TO DIVIDE UP THE LOOT. HE THOUGHT THAT
23 THE BOSS OF THE OPERATION SHOULD HAVE TAKEN IT TO HIS HOUSE
24 BUT, OF COURSE, MR. WEBB CAN'T DO THAT BECAUSE HIS 10-YEAR-
25 OLD BOY IS GOING TO BE HOME FROM SCHOOL THERE. HUMPHREY

1 'CAME BACK FROM PORTLAND WITH MR. WEBB TO HOLD SACK ON THE
2 MARTINDALE HOUSE AND MAKE SURE THAT THE DEFECTOR FROM
3 OREGON, NAMELY, MARTINDALE, DIDN'T HAVE CONTACT OR COME BACK
4 WITHOUT THEM KNOWING ABOUT IT BECAUSE THEY ARE ALL IN BIG
5 TROUBLE IF HE DECIDES HE WANTS TO START TALKING ABOUT WHAT
6 HE'S BEEN DOING WITH THEM IN LAS VEGAS AND IN SALT LAKE CITY
7 DURING THE LATTER PART OF OCTOBER OF 1987. THAT'S WHY THEY
8 CAME BACK. THERE'S NO REASON FOR MR. HUMPHREY TO COME BACK
9 AFTER HE'S ONCE GOTTEN UP TO PORTLAND, BUT WE KNOW HE WAS
10 THERE. THEY EVEN ADMIT TO BEING STOPPED ON BURNSIDE BRIDGE
11 AND ASKED SOME QUESTIONS ABOUT THEIR CAR, OR SOMETHING. WHY
12 WOULDN'T HE JUST SAY THERE HE WOULD BE GONE TWO WEEKS? HOW
13 LONG IS HIS VACATION FROM THE SOUP KITCHEN SUPPOSED TO BE?
14 HE CAME BACK TO HOLD SACK. HE WANTED TO MAKE SURE THEY
15 GOT THE DEFECTOR, RUSS MARTINDALE. THAT'S WHY? THERE'S
16 A LOT OF EVIDENCE OVER HERE. SOME OF IT IS IN THIS BOX AND
17 MS. WELLS TALKED ABOUT ALL THAT EVIDENCE THAT DIDN'T COME IN.
18 WELL, A LOT OF IT WAS NOT RELEVANT. NICE TO KNOW, INTEREST-
19 ING PERHAPS, BUT IT IS NOT RELEVANT TO THE QUESTION YOU HAVE
20 TO DECIDE. FOR THAT REASON, THERE'S GOING TO BE SOME GAPS
21 IN THE NUMBERS. YOU KNOW, THE STATE INTRODUCED SOME
22 EVIDENCE THAT WASN'T ADMITTED INTO EVIDENCE. THE JUDGE
23 HAS MADE A RULING. THAT'S THE WAY THAT THIS LEGAL SYSTEM
24 OPERATES. WE DON'T TALK ABOUT WHAT WAS NOT INTRODUCED. WE
25 TALK ABOUT WHAT WAS AND THERE IS PLENTY. WHY SHOULD BRITT

1 MARTINDALE ENSURE THE APPREHENSION OF HER HUSBAND BY TALKING
2 TO POLICE RATHER THAN JUST LEAD HIM AROUND AND FIND OUT IF
3 THEY WON'T FIND OUT ABOUT ANY OF IT? WHY WOULD THE POLICE
4 NOT SEARCH THE MARTINDALE HOUSE? GOOD GRIEF, IT'S BEEN
5 10 DAYS SINCE THE ROBBERY. WHY WOULD THEY THINK THEY WOULD
6 FIND ANYTHING? THERE'S NO EVIDENCE THEY COULD FIND ANYTHING
7 THERE. YOU CAN'T GET A SEARCH WARRANT WITHOUT PROBABLE CAUSE.
8 THE SEARCH DONE AT THE GREGERSEN HOUSE WAS DONE INCIDENT TO
9 THE ARREST. THAT'S HOW THAT HAPPENED.

10 MS. WELLS WOULD LIKE TO RUN THE STATE'S CASE, BUT
11 SHE CAN'T. SHE CAN PICK AT IT IF SHE WANTS BUT THAT'S AN
12 INDICATION OF HOW WEAK HER OWN CASE IS. SHE HAS NOTHING
13 MORE TO TALK ABOUT THAN THE THINGS HERE ON THE CHART, A
14 FEW WORDS. THE EVIDENCE IS ALL IN FAVOR OF THE STATE.

15 TALK ABOUT REASONABLE DOUBT, DID RUSS MARTINDALE
16 HAVE ANY REASONABLE DOUBT ABOUT WHAT THESE TWO GUYS WERE UP
17 TO WHEN HE RAN AWAY FROM THEM UP IN THE NORTHWEST PART OF
18 OUR COUNTRY THE END OF OCTOBER OF 1987? HE KNEW WHAT WAS
19 GOING ON. IF THE DEFENSE COUNSELS' THEORY ABOUT HOW THIS
20 ALL HAPPENED IS TO BE BELIEVED, RUSS MARTINDALE IS THE
21 GREAT LEADER OF THE PACK. YOU SAW HIM ON THE WITNESS STAND.
22 DOES THAT MAN LOOK LIKE HE IS CAPABLE OF PULLING OFF AN
23 ARMED ROBBERY WITHOUT THE HELP OF ANYBODY ELSE? BY HIMSELF?
24 WERE THESE GENTLEMEN ASSISTING HIM? UH-UH. HE IS A
25 GREAT GOFER, APPARENTLY, KEPT HIS MOUTH SHUT FOR A WHILE,

1 'BUT HE IS NOT THE LEADER OF THE PACK. HE IS NOT THE
2 BUSINESSMAN HERE. IT IS MR. WEBB WHO IS THE BUSINESSMAN.
3 WOULDN'T IT BE A FREUDIAN SLIP FOR MS. WELLS TO SAY, AS SHE
4 DID DURING HER ARGUMENT TO YOU, HE KNEW, REFERRING TO RUSS
5 MARTINDALE, THEY HAD THE GUN USED IN THE ROBBERY. THAT'S
6 THE GUN THEY USED IN THE ROBBERY. THE EVIDENCE IS ONLY
7 CIRCUMSTANTIAL. IT IS TRUE THERE'S NO SERIAL NUMBER ON THAT
8 GUN. NOBODY WOULD HAVE BEEN ABLE TO SEE IT EVEN IF THERE
9 WAS ONE, PROBABLY. SO WE DON'T KNOW WHETHER THAT IS REALLY
10 THE GUN THAT WAS USED IN THE ROBBERY. IT LOOKS EXACTLY LIKE
11 THE GUN THAT WAS USED IN THE ROBBERY, ACCORDING TO EYE-
12 WITNESSES, LOOKS EXACTLY LIKE THE GUN THAT BRITT MARTINDALE
13 SAW AFTER THE ROBBERY. AND THERE'S NO DOUBT ABOUT IT BEING
14 THE DEFENDANTS, OR AT LEAST MS. GREGERSEN'S. EVEN IF THE
15 DESCRIPTION OF IT, AS HAVING NO RECOIL AND ONLY ABLE TO
16 ACCEPT ONE SHELL, IS TO BE BELIEVED, MS. WELLS REFERS TO THE
17 GUN AS SPECIAL, SPECIAL IN THE SAME SENSE THAT THE CHURCH
18 LADY SAYS THINGS ARE SPECIAL. THAT GUN IS NOT GOOD FOR
19 ANYTHING EXCEPT SCARING PEOPLE TO DEATH AND PULLING OFF AN
20 ARMED ROBBERY. THE RUSTY COLOR THAT MR. KARMILIAN TALKED
21 ABOUT WAS THE COLOR OF THE STOCK. IT WASN'T THE COLOR OF
22 THE BARREL. AND NO AMOUNT OF TWISTING OR WORKING WITH HIS
23 TRANSCRIPT OR HIS PRELIMINARY HEARING TESTIMONY IS GOING TO
24 CHANGE THAT.

25 THE INTENT OF MR. WEBB IS ADEQUATELY SHOWN BY THE

1 LITTLE SCENE IN THE KITCHEN OF THE MARTINDALES. MR. HUMPHREY
2 IS NOT EVEN THERE. HE IS IN SHAVING HIS BEARD. HE IS IN
3 SHAVING HIS BEARD. WHY WOULD MR. HUMPHREY ADMIT TO SHAVING
4 HIS BEARD OFF THAT DAY, ANYWAY, DURING THIS CROSS-EXAMINATION
5 TESTIMONY? WELL, BECAUSE TOO MANY PEOPLE SEEN HIM IN TOWN
6 THAT DAY, THAT'S WHY. IT WAS OBVIOUS HE DIDN'T HAVE A BEARD
7 WHEN HE WAS ARRESTED. YOU HAVE TO EXPLAIN SOME WAY, MIGHT
8 AS WELL BE THEN AS LATER. THAT'S THE ONLY REASON THEY
9 THOUGHT THIS THING THROUGH CAREFULLY. THEY TRIED TO TAKE
10 INTO ACCOUNT AS MANY DETAILS AS THEY COULD BUT THEY CAN'T
11 GET THEM ALL. THEY CAN'T GET THEM ALL. MR. WEBB'S INTENT
12 WAS SHOWN BECAUSE HE WAS THE LEADER OF THE PACK. HE WAS
13 SITTING AT THE TABLE. HE WAS DIVIDING UP THE GOODIES. HE
14 WAS GIVING PERMISSION TO HIS GIRLFRIEND TO KEEP HER WATCH,
15 HER RING. EVERYTHING ELSE GOT SWEEPED OFF TO LAS VEGAS,
16 GOT DISPOSED OF IN A MANNER OF A GOOD BUSINESSMAN, BUY CHEAP,
17 SELL FOR A PROFIT. WHEN YOU BUY FOR NOTHING, ANYTHING YOU
18 MAKE IS PROFIT. THE ISSUE IS CREDIBILITY OF THE WITNESSES
19 NOT WHETHER YOU LIKE THEM OR NOT.

20 MR. COPE: HOW MUCH TIME DO I HAVE, YOUR HONOR?

21 THE CLERK: YOU ARE UP.

22 MR. COPE: I WOULD URGE YOU TO EXAMINE THE
23 DOCUMENTARY EVIDENCE CAREFULLY. IT SPEAKS BUCKETS AND
24 BUCKETS. SINCE IT SPEAKS FOR ITSELF AS EVIDENCE, IT IS
25 CERTAINLY A LOT MORE VALUABLE THAN ANYTHING I HAVE TO SAY,

1 'ANYWAY. THIS CASE HAS HAD A LITTLE BIT OF EVERYTHING, BUT
2 THERE'S NOT ENOUGH THERE FOR THE DEFENDANTS TO GET OFF UN-
3 LESS YOU SAY IT IS. IT IS OBVIOUS THAT THE DEFENSE HAS
4 HAD A DIFFICULT TIME EXPLAINING THE EVIDENCE. THEY HAVE
5 MADE A VALANT EFFORT, BUT WHEN YOU LOOK AT IT FROM ALL SIDES,
6 UNDERNEATH AND ON TOP, THE ONLY LOGICAL WAY THAT YOUR COMMON
7 SENSE WILL ALLOW YOU TO PUT EVIDENCE TOGETHER SHOWS CLEARLY
8 THE GUILT OF BOTH OF THESE MEN, THE GUNMAN AND THE WHEELMAN.
9 THOSE ARE THE ONLY TWO PEOPLE YOU HAVE TO CONSIDER. THEY
10 KNOW A LOT, BUT THEY DON'T KNOW ENOUGH. WHEN ALL IS SAID AND
11 DONE, PERHAPS THE MOST USEFUL INFORMATION THAT HAS COME TO
12 YOU ABOUT THE PROCLIVITIES AND HABITS OF MR. WEBB ARE IN
13 THE FORM OF BUSINESS RECORDS FOR MOUNTAIN BELL. YOU WILL
14 NOTE ON PAGE 18 OF THAT PARTICULAR DOCUMENT, STATE'S
15 EXHIBIT 42, A HUGE GAP BETWEEN ABOUT THE 13TH OF OCTOBER
16 AND THE 29TH OF OCTOBER. IF HE WERE REALLY IN ELY TALKING
17 TO HIS GIRLFRIEND'S BROTHER, WHY WOULD IT HAVE BEEN
18 IMPOSSIBLE FOR HIM TO MAKE A CALL, OR ANY SUBSEQUENT DAY,
19 UNTIL ALL OF A SUDDEN IN LAS VEGAS HE PICKS UP THE TRAIL
20 AGAIN? THE REASON IS OBVIOUS. MR. WEBB IS WITH MR.
21 HUMPHREY IN SALT LAKE DOING A ROBBERY. MR. MARTINDALE IS
22 DIVIDING UP THE LOOT AT MR. MARTINDALE'S HOUSE, GOING
23 SOMEPLACE TO GET RID OF IT SO THEY CAN CONTINUE ON WITH
24 TAKING CARE OF BUSINESS.

25 THE COURT: SWEAR THE BAILIFF.

8

October 31 198

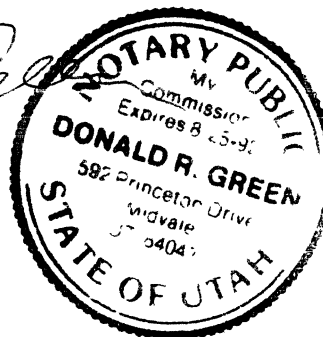
I Rhonda Blanchard was present when Britt Martindale told me that Renee Gregersen had a Diamond watch and also a Ring.

She also told me that she had sent a picture of Russell Martindale back east to show to a friend, but she wanted her to send it back as she didnt want anyone to see it because a jewlery store had been robbed back there.

SIGNED Rhonda Blanchard

DATED Nov 3, 88

Donald R. Green
11/3/88



A: Yes I work here in Trolley Square, in Trolley Square with King Anthony Jewelers

Q: Were you working in that Trolley Square Jewelry store during the month of October 1987

A: Yes, and its my store

Q: What is the name of that store

A: Kings Custom Jewelry

Q: What kinds of things do you sell in that store

A: Retail jewelry store, custom made jobs, repairs, silvers

Q: I would like you to think of the 21st day of October, 1987, did anything unusual happen to you while you were working your store that day

A: Yes

Q: What was it that happened that was unusual

A: Well I got robbed

Q: o.k. about what time of day was it that you got robbed

A: Around 3:30 afternoon

Q: How many robbers were there

A: One person;

Q: Could you please describe what that robber looked like

A: About 54 to 50 years old was it and with the beard, glasses, hat, jacket

Q: Do you remember anything that he might have been carrying

A: Shotgun

Q: Could you describe the shotgun

A: Well it was short, about this

Q: Your honor the witness is indicating approximately 18 inches in
length

A: Yes

Q: What color was it

A: Oh it was rusty when I saw the, my English is not perfect but I
can, make it to telling what

Q: Do you know the Armenian word for what it is that you wish

A: Sure

Q: Could you go ahead and say that

(Side B Mark 23-24)

A: -----

Q: Now your honor I have given to understand that the gentleman in
the white sweater speaks Armenian, I do not believe that he is a
certified court reporter and quite frankly I do not know

JUDGE: An interpreter

PROSECUTOR: what qualifications one must have to do that but, could
we use him interpreting

JUDGE: Any objections on the part of the defendants

JB: No objection

LR: No objection

SWEARING IN OF INTERPRETER

JUDGE: Now so we can keep it as simple as possible, simply have him
interpret the English word for the Armenian words when the witness
is not able to express himself in English, can we do it that way

JB: That would be agreeable to me your honor. I think that's
appropriate.

PROSECUTOR: Sir would you please tell us in English what the word was that was last given in Armenian by the witness.

A: Barrel

JUDGE: Tell me

A: Barrel

JUDGE: O.k.

PROSECUTOR: And what about the wooden part of the shotgun, did you see what color that was

A: I don't think so

Q: The man who came in with the shotgun what did he do when he came into your store and you first saw him

A: When he came in he was exactly like this with the glasses I have, I am working on my bench, so I thought he was a customer coming in, you know, so I step up, when I step up I saw his pulling the shotgun from the handbag which is this high, was it, and he told me give me all the gold, you know, so when I saw the shotgun, I said I don't have gold here its in the safe so he makes me walk to the safe, I open the safe, I give him everything I have in the safe, I put in the bag, later on he told me give me all the jewelry in the showcase, you know in the case, so I start pulling out the boxes and put in the bag, and he told me I want the second one too, so I did the second one too and uh

PROSECUTOR: Could I stop you right there for just a minute

A: Sure

Q: What color was the bag he was having you put things into
(pause)

A: I really don't remember right now, I can't remember that

DAVID E. YOCOM
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JAMES M. COPE
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Telephone: (801) 363-7900

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,)	
Plaintiff,	)	RESPONSE TO REQUEST FOR DISCOVERY
v.)	
JOHN E. HUMPHREY,	)	Case No. CR87-1572
Defendant.	)	Honorable James S. Sawaya

The State of Utah, by and through its attorney, JAMES M. COPE, responds as follows to the defendants December 22, 1987 request for discovery, using the same paragraph numbers employed by the defendant:

1. The prosecution knows of no statements of the defendants which have not been already outlined in the statements of witnesses offered at preliminary hearing. A 20 page transcript of the statement given by co-defendant Gregerson to Detective Rav Dalling on November 4, 1987 was provided under cover of our December 2, 1987 letter, as was a 21 page transcript of the statement given by Britt Martindale on November 3, 1987.

2. Mr. Humphrey's criminal record is known to us only through his RAP sheet, which is attached.

Appendix P.

3. Certain items of jewelry and a firearm were seized by police agents within a day of Humphrey's arrest. Also, clothing which matches the description of that worn by Mr. Humphrey during the robbery was discovered in a stolen car shortly thereafter. The defense may inspect these items at any convenient time by following the well-known and established protocols. No scientific analysis of any of these items is anticipated.

4. No evidence in possession of the State mitigates the circumstances of these crimes.

5a. All the reports fitting this description were provided to the defendant on December 2, 1987.

5b. The State intends to call the following persons at the trial of this case:

1. Det. John Lomax, Sheriff's Office, Detective Division. Work Phone: 535-7157
2. Sgt. Bill Abbott, Sheriff's Office, Detective Division. Work Phone: 535-7157
3. Det. H. Jackson, Sheriff's Office, Detective Division. Work Phone: 535-7157
4. Det. Dalling, S.L.C.P.D. Work Phone: 535-6522
5. Britt Martindale
6. Russell Martindale
7. Stephen Church, 454 East South Temple #205, S.L.C., Utah 84111 Work Phone: 532-6202
8. Karekine Karmilian, 6836 Baldwin, West Jordan, Utah, 84084 Work Phone: 521-9114

The State respectfully declines to provide the home telephone numbers of the witnesses on the grounds that such disclosure is a gross and unwarranted invasion of their privacy. The State will disclose the out-of-state address of the Martindales only upon order of the court.

5c. All the reports fitting this description were provided to the defendant on December 2, 1987.

5d. There are no such reports.

5e. The State has no information regarding criminal convictions of witnesses and respectfully declines to research the matter beyond the information it has already provided.

5f. On December 22, 1987 the State offered to allow Carolyn Renae Gregerson to plead to Theft by Receiving, a Third Degree Felony, in settlement of the Aggravated Robbery count pending against her.

5g. There are no such reports known to the State.

5h. There are no such items known to the State.

5i. This information is neither known nor discoverable.

5j. These items were either previously provided as per paragraph 1, or do not exist in the prosecutor's files.

5k. The items meeting this description, if they exist at all, have always been available for viewing. The prosecutor will assist defense counsel to obtain a viewing.

5l. The prosecution knows of no such reports.

5m. Mr. Humphrey's lack standing to contest the legality of a search of his co-defendant's property induces the State to decline Mr. Humphrey's requests to view these items, other than as described in paragraph 3.

Plaintiff's Answer to
Defendant's Request for
Discovery
Case No. CR87-1572
Page 4

The State respectfully declines to provide materials unless such come into its possession in the normal course of diligent preparation for the trial of this case. Although we understand our continuing duty to disclose discoverable material, we do not believe we must create such material.

DATED this 29th day of December, 1987.

DAVID E. YOCOM
Salt Lake County Attorney

James M. Cope
JAMES M. COPE
Deputy County Attorney

CERTIFICATE OF MAILING

I hereby certify that on this 30th day of December, 1987, I mailed a true and correct copy of the foregoing Response to Request for Discovery to: LISA J. REMAL, Attorney for Defendant, at the address stated below.

Jeri Pace
Secretary

LISA J. REMAL
Attorney for the Defendant
333 South Second East
Salt Lake City, Utah 84111

jpc//16D
87-1-73822

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Principal \$ 150.00
Fee \$ 13.45
Total \$ 163.45

Time Accepted: _____ Date: 10-1-87
Time Sent: _____ Amount Sent: 150.00

Payee's Name Russell D. Martindale Payee's Phone _____
Paying Location W/C
City & State _____
Sender's Name Britt Martindale
Sender's Address 560 W Phone _____
By James
Agent Location St. Louis Accepting Agent
City & State St. Louis, MO

0166531
TRANSACTION NUMBER

WHITE COPY - to CDN / YELLOW COPY - to Agency / PINK COPY - to Customer

DEPOSITION SUBPOENA TO TESTIFY OR PRODUCE DOCUMENTS OR THINGS

BROOKE C. WELLS
Attorney for Defendant
SALT LAKE LEGAL DEFENDER ASSOCIATION
333 South Second East
Salt Lake City, Utah 84111
Phone: 532-5444

In the District Court of Salt Lake County,
State of Utah

THE STATE OF UTAH,
Plaintiff,

vs.

CHARLES WEBB,
Defendant.

Subpoena
Duces Tecum *

Civil No. CR87-1572
JUDGE JAMES S. SAWAYA

TO: CUSTODIAN OF RECORDS - FLYING J TRUCK STOP

YOU ARE COMMANDED to appear at _____

in the city of _____ on the _____ day of _____

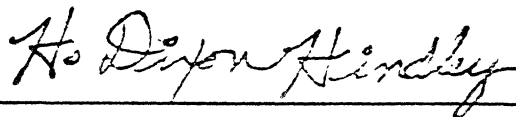
19 ____, at _____ o'clock _____ M. to testify at the taking of deposition in the above entitled action
pending in the District Court in and for Salt Lake County, State of Utah, and bring with you*

The records of transaction #0166531 on 10/1/87 between
Britt Martindale and Russell Martindale.

Dated: June 3, 19 88.

BROOKE C. WELLS

Attorney for: Defendant



Clerk

By _____

Address _____

Deputy Clerk

Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30(b)(6), Utah Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and shall set forth, for each person designated, the matters on which he will testify or produce documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.

*Strike the words "Duces Tecum" and "and bring with you" unless the subpoena is to require the production of documents or tangible things, in which case the documents and things should be designated in the blank space provided for that purpose. If testimony by an organization representative or designee is requested, describe with reasonable particularity the matters on which examination is requested.

County of Salt Lake - State of Utah

FILE NO. CR 87-1572

LE: (✓ PARTIES PRESENT)

COUNSEL: (✓ COUNSEL PRESENT)

State of Utah

: James Cope

John E. Humphrey,

: Lisa Rensal

Charles Webb

: Ray Stoddard

Coralyn Gregerson

:

CLERK

REPORTER

BAILIFF

HON.

DATE:

JUDGE

J. Bowring

Jan 22, 1988

I heard:

1. Dept Humphrey & Webb motion to sever trial from dept Gregerson.
2. Dept Webb & Gregerson motion to suppress evidence.

Ruling:

1. Motion to sever is granted.
2. Motion to suppress is denied.

J.S.

APPENDIX.

0 in + ... 1988

AFFIDAVIT

STATE OF NEVADA)
COUNTY OF ELKO) SS.

CAROLYN RENEE GREGERSEN, being first duly sworn on
oath, Deposes and states that:

1. I' am the common law wife, of charles Webb.
2. I CAROLYN RENEE GREGERSEN was also a co-defendant in this case and was to be tried with the defendant, Charles Webb.
3. On January 22, 1988 my privately retained counsel Ray Stoddard, filed a motion to sever, and a motion to suppress.
4. The motion to sever was granted under the BRUTEN V U.S. CASE. Over the statement that I made to Detective Ray Dalling Wednesday November 4, 1987.
5. The motion to supress was denied.
6. I was coersed into making the statement that I gave Detective Ray Dalling.
7. Detective Ray Dalling asked me November 4, 1987 in my taped statement, that an incident occured at a jewelry store here in Salt Lake City. I told Detective Ray Dalling that I really don't know, I don't know.

8. Detective Ray Dalling stopped the tape and told me if I did not tell him about this robbery, He would see that I would go to Prison and I would never see my children or husband again.
9. I asked Detective Ray Dalling what he wanted me to do.
10. He told me he would tell me about the robbery, and would write things on a card for me to say.
11. I told Detective Ray Dalling if it would help me and my kids I would do it.
12. Then he turned the tape on again.
13. Detective Ray Dalling was telling me that we went to a house on Wasatch, the Martindales, is what he wrote on the card.
14. He asked me what happened to the jewelry and, I thought he was asking me about the diamond watch, and ring that my husband bought for my birthday when he came home from Oregon.
15. I never did tell Detective Ray Dalling that the Diamond Watch or Ring came from this robbery in Salt Lake.
16. On November 4, 1987 I never did give Detective Jackson and Detective Dalling permission to search the premises and property located at 111 W. Wasatch Apt.#14 Midvale Utah. Or did I sign a permission to search document.
17. On January 22, 1988 A motion to Suppress was before the court on the grounds that I did not sign the permission to search document. The court did not believe me when I told the court that I did not sign the permission to search document but believed Detective Ray Dalling when he said that I did. the court denied the Motion to Suppress.
18. I knew I did not sign the permission to search document so I went to a Certified Graphanalysis, Linda Knight and her opinion as a certified Graphanalysis that I CAROLYN RENEE

GREGERSEN did not sign the questioned search agreement.

19. A copy of Linda Knight's opinion and the permission to search document is attached to my Affidavit as my evidence that I did not sign the permission to search document.

20. On May 20, 1988 a renewed motion to suppress was before the court on new evidence that I did not sign the permission to search document.

21. That Motion was denied by the court.

22. I believe that my husband the defendant, Charles Webb was not given a fair trial in case no. CR.87-1572 in district court Salt Lake County.

23. I was one of the defendants witnesses, and because we was indigent the Salt Lake Legal Defenders Assoc. would not bring me to court to testify for my husband the defendant, Charles Webb.

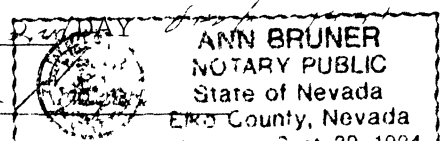
24. My testimony would have been " That my husband was not home or in Salt Lake City, Utah on October 21, 1987, but that he came home November 1, 1987 and on the evening of November 1, or 2, Britt Martindale called my husband and asked him if he would buy an old gold diamond watch and ring, my husband and I went down to Britt's house and my husband bought the watch and ring from Britt Martindale, John Humphrey was at Britt's house when my husband bought the watch and ring from Britt Martindale.

25. My testimony would also have been that my husband Charles Webb always called home, sometimes he would call me collect, but he always called, but when he is in Nevada, he almost always pays for the phone call on his end.


CAROLYN RENEE GREGERSEN

SUBSCRIBED AND SWORN TO BEFORE ME THIS
OF 22 NOV 1990
MY commission expires:
22 NOV 1994

NOTARY



PERMISSION TO SEARCH

I, RENEE GREGERSEN, have been informed by
- DET JACKSON and DET DALLING
who made proper identification as (an) authorized law enforcement officer(s) of
the SALT LAKE SALT LAKE CITY Police Department, Utah, of my CONSTITUTIONAL RIGHT not
to have a search made of the premises and property owned by me and/or under my
care, custody and control, without a search warrant

Knowing of my lawful right to refuse to consent to such a search, I willingly
give my permission to the above named officer(s) to conduct a complete search of
the premises and property, including all buildings and vehicles, both inside and
outside of the property located at 111 W WASATCH APT #14.
The above said officer(s) further have my permission to take from my premises
and property, any letters, papers, or any other property or things which they
desire as evidence for criminal prosecution in the case or cases under investi-
gation

This written permission to search without a search warrant is given by me to the
above officer(s) voluntarily and without any threats or promises of any kind,
at ORION AVE on this 17th day of NOV 1987 at 111 W WASATCH

Signed

Renee Gregeresen

Witness

H. Jackson

Witness

Det. Dalling

Address

SLCPD

Address

SLCPD

Phone (H)

(B)

Phone (H)

(B)



LINDA KNIGHT

CERTIFIED GRAPHANALYSIS

39 North Village Way
Fruit Heights, Utah 84037
(801) 544-0429

February 15, 1988

From close examination of the names signed in front of me by Cardyn Gregerson and the name Cardyn allegedly signed on the Permission to Search document. It is my opinion as a Certified Graphoanalysis that the Permission to Search document was not signed by Cardyn Gregerson.

Linda E. Knight
Certified Graphoanalysis

Verification of Credentials

1. Chris Thornbury - President of Utah Chapter
(C.G.A.) - Certified Graphoanalysis
Phone - 967-6421
2. Marilyn Bullette - (C.G.A.) -
Phone - Home - 226-1851
Work - 594-7167
3. Vernene Krein - (C.G.A.) - American Falls, Idaho
Phone - (208) 226-2576
4. International Graphoanalysis Society - Chicago, Ill.
Phone - (312) 930-7446

REK 301 - RESEARCH

1. INFC, CTRAIL-00N

15F / / TIME 00:00

DETAILS FOLLOW 107

CASE 07-04861

COOH AZELOS HUMPHREY, (COHN ELLERKIN), 12-16-34, AGG KOSCHICKY/AGG ASSAULT
EIGHT SEVEN, CHOCOLYN.

11-2-47, 11-16-47, 11-17-47, 11-18-47, 11-19-47, 11-20-47, 11-21-47, 11-22-47, 11-23-47, 11-24-47, 11-25-47, 11-26-47, 11-27-47, 11-28-47, 11-29-47, 11-30-47, 12-1-47, 12-2-47, 12-3-47, 12-4-47, 12-5-47, 12-6-47, 12-7-47, 12-8-47, 12-9-47, 12-10-47, 12-11-47, 12-12-47, 12-13-47, 12-14-47, 12-15-47, 12-16-47, 12-17-47, 12-18-47, 12-19-47, 12-20-47, 12-21-47, 12-22-47, 12-23-47, 12-24-47, 12-25-47, 12-26-47, 12-27-47, 12-28-47, 12-29-47, 12-30-47, 12-31-47, 1-1-48, 1-2-48, 1-3-48, 1-4-48, 1-5-48, 1-6-48, 1-7-48, 1-8-48, 1-9-48, 1-10-48, 1-11-48, 1-12-48, 1-13-48, 1-14-48, 1-15-48, 1-16-48, 1-17-48, 1-18-48, 1-19-48, 1-20-48, 1-21-48, 1-22-48, 1-23-48, 1-24-48, 1-25-48, 1-26-48, 1-27-48, 1-28-48, 1-29-48, 1-30-48, 1-31-48, 2-1-48, 2-2-48, 2-3-48, 2-4-48, 2-5-48, 2-6-48, 2-7-48, 2-8-48, 2-9-48, 2-10-48, 2-11-48, 2-12-48, 2-13-48, 2-14-48, 2-15-48, 2-16-48, 2-17-48, 2-18-48, 2-19-48, 2-20-48, 2-21-48, 2-22-48, 2-23-48, 2-24-48, 2-25-48, 2-26-48, 2-27-48, 2-28-48, 2-29-48, 2-30-48, 2-31-48, 3-1-48, 3-2-48, 3-3-48, 3-4-48, 3-5-48, 3-6-48, 3-7-48, 3-8-48, 3-9-48, 3-10-48, 3-11-48, 3-12-48, 3-13-48, 3-14-48, 3-15-48, 3-16-48, 3-17-48, 3-18-48, 3-19-48, 3-20-48, 3-21-48, 3-22-48, 3-23-48, 3-24-48, 3-25-48, 3-26-48, 3-27-48, 3-28-48, 3-29-48, 3-30-48, 3-31-48, 4-1-48, 4-2-48, 4-3-48, 4-4-48, 4-5-48, 4-6-48, 4-7-48, 4-8-48, 4-9-48, 4-10-48, 4-11-48, 4-12-48, 4-13-48, 4-14-48, 4-15-48, 4-16-48, 4-17-48, 4-18-48, 4-19-48, 4-20-48, 4-21-48, 4-22-48, 4-23-48, 4-24-48, 4-25-48, 4-26-48, 4-27-48, 4-28-48, 4-29-48, 4-30-48, 4-31-48, 5-1-48, 5-2-48, 5-3-48, 5-4-48, 5-5-48, 5-6-48, 5-7-48, 5-8-48, 5-9-48, 5-10-48, 5-11-48, 5-12-48, 5-13-48, 5-14-48, 5-15-48, 5-16-48, 5-17-48, 5-18-48, 5-19-48, 5-20-48, 5-21-48, 5-22-48, 5-23-48, 5-24-48, 5-25-48, 5-26-48, 5-27-48, 5-28-48, 5-29-48, 5-30-48, 5-31-48, 6-1-48, 6-2-48, 6-3-48, 6-4-48, 6-5-48, 6-6-48, 6-7-48, 6-8-48, 6-9-48, 6-10-48, 6-11-48, 6-12-48, 6-13-48, 6-14-48, 6-15-48, 6-16-48, 6-17-48, 6-18-48, 6-19-48, 6-20-48, 6-21-48, 6-22-48, 6-23-48, 6-24-48, 6-25-48, 6-26-48, 6-27-48, 6-28-48, 6-29-48, 6-30-48, 6-31-48, 7-1-48, 7-2-48, 7-3-48, 7-4-48, 7-5-48, 7-6-48, 7-7-48, 7-8-48, 7-9-48, 7-10-48, 7-11-48, 7-12-48, 7-13-48, 7-14-48, 7-15-48, 7-16-48, 7-17-48, 7-18-48, 7-19-48, 7-20-48, 7-21-48, 7-22-48, 7-23-48, 7-24-48, 7-25-48, 7-26-48, 7-27-48, 7-28-48, 7-29-48, 7-30-48, 7-31-48, 8-1-48, 8-2-48, 8-3-48, 8-4-48, 8-5-48, 8-6-48, 8-7-48, 8-8-48, 8-9-48, 8-10-48, 8-11-48, 8-12-48, 8-13-48, 8-14-48, 8-15-48, 8-16-48, 8-17-48, 8-18-48, 8-19-48, 8-20-48, 8-21-48, 8-22-48, 8-23-48, 8-24-48, 8-25-48, 8-26-48, 8-27-48, 8-28-48, 8-29-48, 8-30-48, 8-31-48, 9-1-48, 9-2-48, 9-3-48, 9-4-48, 9-5-48, 9-6-48, 9-7-48, 9-8-48, 9-9-48, 9-10-48, 9-11-48, 9-12-48, 9-13-48, 9-14-48, 9-15-48, 9-16-48, 9-17-48, 9-18-48, 9-19-48, 9-20-48, 9-21-48, 9-22-48, 9-23-48, 9-24-48, 9-25-48, 9-26-48, 9-27-48, 9-28-48, 9-29-48, 9-30-48, 9-31-48, 10-1-48, 10-2-48, 10-3-48, 10-4-48, 10-5-48, 10-6-48, 10-7-48, 10-8-48, 10-9-48, 10-10-48, 10-11-48, 10-12-48, 10-13-48, 10-14-48, 10-15-48, 10-16-48, 10-17-48, 10-18-48, 10-19-48, 10-20-48, 10-21-48, 10-22-48, 10-23-48, 10-24-48, 10-25-48, 10-26-48, 10-27-48, 10-28-48, 10-29-48, 10-30-48, 10-31-48, 11-1-48, 11-2-48, 11-3-48, 11-4-48, 11-5-48, 11-6-48, 11-7-48, 11-8-48, 11-9-48, 11-10-48, 11-11-48, 11-12-48, 11-13-48, 11-14-48, 11-15-48, 11-16-48, 11-17-48, 11-18-48, 11-19-48, 11-20-48, 11-21-48, 11-22-48, 11-23-48, 11-24-48, 11-25-48, 11-26-48, 11-27-48, 11-28-48, 11-29-48, 11-30-48, 11-31-48, 12-1-48, 12-2-48, 12-3-48, 12-4-48, 12-5-48, 12-6-48, 12-7-48, 12-8-48, 12-9-48, 12-10-48, 12-11-48, 12-12-48, 12-13-48, 12-14-48, 12-15-48, 12-16-48, 12-17-48, 12-18-48, 12-19-48, 12-20-48, 12-21-48, 12-22-48, 12-23-48, 12-24-48, 12-25-48, 12-26-48, 12-27-48, 12-28-48, 12-29-48, 12-30-48, 12-31-48, 1-1-49, 1-2-49, 1-3-49, 1-4-49, 1-5-49, 1-6-49, 1-7-49, 1-8-49, 1-9-49, 1-10-49, 1-11-49, 1-12-49, 1-13-49, 1-14-49, 1-15-49, 1-16-49, 1-17-49, 1-18-49, 1-19-49, 1-20-49, 1-21-49, 1-22-49, 1-23-49, 1-24-49, 1-25-49, 1-26-49, 1-27-49, 1-28-49, 1-29-49, 1-30-49, 1-31-49, 2-1-49, 2-2-49, 2-3-49, 2-4-49,

KZO RECEIVED INFORMATION THAT THE APT'S WERE RESPONSIBLE FOR THE
 MURDER OF THE APT'S WERE RESPONSIBLE FOR THE ROBBERY OF THE VICTIM
 IDENTIFIED.

THESE FACTS WERE REFLECTED IN RUC 101 COLE WHO ISSUED CIRCULARS FOR
GRANTED ROYALTY AND ACCORDINGLY 45-5400-100 THE WORKING WRT SIGNATURE
OF PLCLAVE ON 11-3-87.

ON THIS DATE THE AGENTS WERE PRESENT AT THE RESIDENCE OF CAROLYN COLBENS, 601 W. WASHINGTON, 2ND FLOOR, WITH AN OPERATIVE WHO STATED THAT A PERSON WAS REGISTERED IN HER NAME, THE SAME PERSON COULD NOT BE LOCATED AT THE PREMISES. WITH THE ASSISTANCE OF DETECTIVE LOUIS THE AGENT IN CONDUCTED A THOROUGH SEARCH, BUT TO BE HELD TO EVIDENCE.

AND A LIST OF INVENTORIES OF THE VEHICLE WHICH WAS USED DURING THE ROYALTY AND
HOLDING.

1. Went to the office to see the doctor about the problem with the car.

04 1574 10/20

OFFICE OF THE ATTORNEY GENERAL - OF

CASE 17-03001

1	REPORTING OFFICER	1	REPORTING OFFICER'S NO./DATE
2	LOCATION	1	
3	FOR STATUS	1	FOR OFFICE
4	FOR OFFICE	1	ADDRESS (OFFICE)
5	YES	1	YES
6	FOR STATUS	1	(OFFICE) IS
7	TIME	1	
8	DATE	1	SIZE

APPENDIX T.

Resume

Name: Linda J. Knight

Birth date: November 28, 1951

Birthplace: Ogden, Utah

Parents: William A. Pettit and Emma Pettit
1076 Kansas Ave.
Napa, California 94558

Spouse: Dr. James D. Knight

Children:	Newel J. Knight	12-20-73
	Heather J. Knight	03-29-75
	Vincent A. Knight	11-04-76
	Alisha C. Knight	11-08-78
	Lacy A. Knight	07-09-80
	Dale G. Knight	07-09-82 (Deceased)
	Lynn W. Knight	03-28-84
	Raina Z. Knight	08-10-85

EDUCATION:

High School:	Napa Senior High	L.D.S. Seminary
	Napa, California	Napa, California
	Graduated - June 1970	Graduated - June '70

College: Ricks Jr. College
Rexburg, Idaho
Graduated, Associate Degree - May 19

QUALIFICATIONS:

General Course: International Graphoanalysis Society
Chicago, Ill
Graduated - June 1970

Master Course: International Graphoanalysis Society
Chicago, Ill
Graduate - June 1988

Member Utah Graphoanalysis Society

WORK RELATED EXPERIENCE:

In depth Report for Dr. Neil King of Idaho Falls, Idaho

In depth Report for Dr. Bud Glanzer of Idaho Falls, Idaho

Employee selection reports for Dr. James D. Knight, Bountiful, Utah.

In depth comparison report for classified Client

Received
7/19/88
File

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

vs.

CHARLES WILLIAM WEBB (jail)

Defendant

**JUDGMENT, SENTENCE
(COMMITMENT)**

Case No. CR87-1572
Count No. one
Honorable James S. Sawaya
Clerk Susan Gray
Reporter Cathy Gallegos
Bailiff Nick Kirk
Date July 15, 1988

☐ The motion of _____ to enter a judgment of conviction for the next lower category of offense and impose sentence accordingly is ☐ granted ☐ denied. There being no legal or other reason why sentence should not be imposed, and defendant having been convicted by ☒ a jury; ☐ the court; ☐ plea of guilty; ☐ plea of no contest; of the offense of aggravated robbery, a felony of the 1st degree, ☐ a class _____ misdemeanor, being now present in court and ready for sentence and represented by B. Wells, and the State being represented by J. Cope, is now adjudged guilty of the above offense, is now sentenced to a term in the Utah State Prison:

- ☐ to a maximum mandatory term of _____ years and which may be for life;
☐ not to exceed five years;
☐ of not less than one year nor more than fifteen years;
☒ of not less than five years and which may be for life;
☐ not to exceed _____ years;
☐ and ordered to pay a fine in the amount of \$_____;
☐ and ordered to pay restitution in the amount of \$_____ to _____

- ☐ such sentence is to run concurrently with _____
☐ such sentence is to run consecutively with _____
☐ upon motion of ☐ State, ☐ Defense, ☐ Court, Count(s) _____ are hereby dismissed.
☐ _____

- ☐ Defendant is granted a stay of the above (☐ prison) sentence and placed on probation in the custody of this Court and under the supervision of the Chief Agent, Utah State Department of Adult Parole for the period of _____, pursuant to the attached conditions of probation.
☒ Defendant is remanded into the custody of the Sheriff of Salt Lake County ☒ for delivery to the Utah State Prison, Draper, Utah, or ☐ for delivery to the Salt Lake County Jail, where defendant shall be confined and imprisoned in accordance with this Judgment and Commitment.
☒ Commitment shall issue forthwith

DATED this 15th day of July, 19 88

APPROVED AS TO FORM:

Defense Counsel

Deputy County Attorney

[Signature]
DISTRICT COURT JUDGE

THE STATE OF UTAH

VS

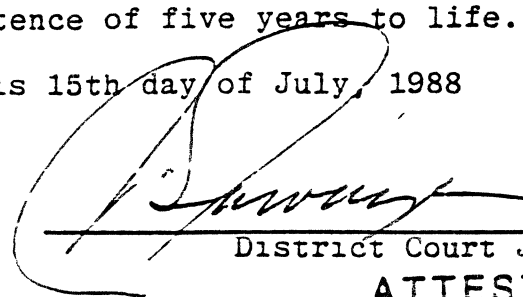
CHARLES WILLIAM WEBB (jail)

JUDGMENT, SENTENCE
(COMMITMENT)

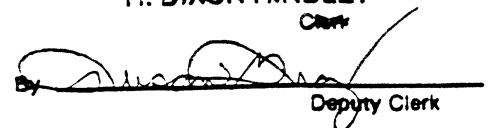
Case No.	CR87-1572
Honorable	James S. Sawaya
Clerk	Susan Gray
Reporter	Cathy Gallegos
Bailiff	Nick Kirk
Date	July 15, 1988

Pursuant to UCA 76-3-203 (1), the Court further sentences defendant Charles William Webb to serve a mandatory one year for use of a firearm and discretionary five years for use of a firearm, each to run consecutively to the sentence of five years to life.

Dated this 15th day of July, 1988


District Court Judge

ATTEST
H. DIXON HINDLEY


Deputy Clerk

1 IF THE COURT IS CONSIDERING IMPOSING A FIREARM ENHANCEMENT,
2 I WOULD INDICATE THAT THE EVIDENCE WAS THAT MR. WEBB WAS
3 NOT A PARTICIPANT IN THE ROBBERY ITSELF, ACCORDING TO THE
4 EVIDENCE, AND THEREFORE, WOULD NOT HAVE BEEN IN POSSESSION
5 OR WOULD NOT HAVE USED A FIREARM TOWARD ANOTHER PERSON.
6 I BELIEVE THAT IT WOULD BE INAPPROPRIATE TO ENHANCE ANY
7 SENTENCE WITH THE USE OF A FIREARM ENHANCEMENT CLAUSE.

8 THE COURT: MR. HUMPHREY, DO YOU WISH TO MAKE ANY
9 STATEMENT?

10 MS. REMAL: YOUR HONOR, I HAVE SOMETHING TO SAY.

11 MR. HUMPHREY: I HAVE SAID ALL I WANT TO SAY.

12 IF YOU WANT, YOU CAN SENTENCE ME. I MEAN --

13 THE COURT: I CAN'T UNDERSTAND WHAT YOU ARE SAYING.

14 MR. HUMPHREY: I JUST -- WHAT I SAID, I DON'T LIKE
15 THE UNDUE PROCESS --

16 THE COURT: I SEE, OKAY.

17 MS. REMAL: HE INDICATED HE'S ALREADY --

18 THE COURT: SAID EVERYTHING HE NEEDS TO SAY.

19 MS. REMAL: I HAVE ONE COMMENT TO MAKE ABOUT MR.
20 HUMPHREY. IT'S WITHOUT QUESTION THAT HE SPENT A GREAT DEAL
21 OF TIME IN PRISON IN THE LAST 30 YEARS OR SO. DESPITE THAT
22 FACT, HE APPARENTLY SUCCESSFULLY COMPLETED HIS PAROLE --
23 WAS IT '85 OR '86? '86. IT INDICATED IN THE PRESENTENCE
24 REPORT THAT ALTHOUGH HIS PERFORMANCE ON PAROLE WAS NOT
25 PERFECT, AND HE WAS DIFFICULT TO DEAL WITH, THAT HE

1 IDENTIFY ANYTHING IN THE POLICE REPORT.

2 THE COURT: WITH REGARD TO EACH OF THESE
3 DEFENDANTS -- DO YOU WANT TO BE QUIET? IT WILL BE THE
4 JUDGMENT AND SENTENCE OF THE COURT THAT EACH SHALL SERVE
5 THE INDETERMINATE TERM PROVIDED BY LAW FOR THE OFFENSE OF
6 AGGRAVATED ROBBERY, THAT BEING NOT LESS THAN FIVE YEARS AND
7 WHAT MAY BE FOR LIFE. THE COURT WILL FIND THAT BASED UPON
8 THE FINDINGS OF THE JURY THAT THEY HAVE BEEN FOUND GUILTY
9 OF THAT CHARGE WHICH CONTAINS AN ELEMENT OF THE USE OF A
10 FIREARM. THE COURT WILL FIND THAT THE FIREARM ENHANCEMENT
11 STATUTE DOES APPLY IN THIS SITUATION AND BASED THEREON,
12 EACH OF THE DEFENDANTS WILL BE SENTENCED TO SERVE AN ADDI-
13 TIONAL MANDATORY ONE YEAR TO RUN CONSECUTIVELY AND IN THE
14 DISCRETION OF THE COURT SERVE AN ADDITIONAL FIVE YEARS,
15 WHICH WILL RUN CONSECUTIVELY. COMMITMENT WILL ISSUE FORTH-
16 WITH.

17 GENTLEMEN, THE APPEAL TIME IN THIS STATE IS 30
18 DAYS. YOU HAVE A RIGHT TO FILE AN APPEAL BEFORE THE
19 APPROPRIATE APPELLATE COURT IN THIS STATE WITHIN 30 DAYS.
20 THAT'S ALL.

21 MR. WEBB: YOUR HONOR, MAY I SAY SOMETHING?

22 THE COURT: YOU HAD YOUR OPPORTUNITY, MR. WEBB.

23 MR. WEBB: YES, SIR, AFTER SENTENCE HAS BEEN
24 PRONOUNCED, I DO WISH TO ASK THIS COURT UNDER RULE 24 THAT
25 I HAVE MORE TIME TO ASK THIS COURT FOR A NEW TRIAL.

Appendix X.



Geoffrey J. Butler
Clerk

Supreme Court State of Utah

332 State Capitol

Salt Lake City, Utah 84114

December 10, 1991

Gordon R. Hall
Chief Justice
Richard C. Howe
Associate Chief Justice
J. Daniel Stewart
Justice
Christine M. Durham
Justice
Michael D. Zimmerman
Justice

Mr. Charles W. Webb
CUCF'
P.O. Box 550
Gunnison, Utah 84634

Re: Charles W. Webb v. Fred Van Der Veur

Dear Mr. Webb:

This day your petition for writ of habeas corpus was made returnable to the Sixth District Court for Sanpete County.

The Utah Supreme Court is an appellate court and does not take evidence. Your petition has therefore been referred to the appropriate court of general jurisdiction for disposition.

If your petition is successful in the District Court you will no doubt be happy. If you are unsuccessful at the District level you may then file a notice of appeal in the Sixth District for an appeal to the appellate court of appropriate jurisdiction.

Please remember that with an appeal, you must file the notice within thirty days of the order dismissing the petition.

Very truly yours,

Geoffrey J. Butler
Clerk



Geoffrey J. Butler
Clerk

Supreme Court State of Utah

332 State Capitol
Salt Lake City, Utah 84114

Rec'd 12-12

Gordon R. Hall
Chief Justice
Richard C. Howe
Associate Chief Justice
J. Daniel Stewart
Justice
Christine M. Durham
Justice
Michael B. Zimmerman
Justice

December 10, 1991

Ms. Kristine Christiansen
Clerk of the Court
Sixth Judicial District
Sanpete County Courthouse
Manti, Utah 84642

Re: Charles W. Webb v. Fred Van Der Veur

Dear Ms. Christiansen:

Pursuant to Article VIII, Sections 3 and 5 of the Utah State constitution, the Utah Supreme Court hereby refers the enclosed petition for writ of habeas corpus to the Sixth Judicial District for Sanpete County for such disposition as the District Court deems appropriate.

Very truly yours,

Geoffrey J. Butler
Geoffrey J. Butler
Clerk

Enc:

DISTRICT COURT, STATE OF UTAH
SANPETE COUNTY
Address: 160 North Main Street, Manti, UT 84642
Telephone: (801) 835-2131

Charles W. Webb,

Petitioner,

NOTICE RE: (1) TRANSFER
AND (2) HEARING ON MOTION

vs.

Case number 10012

FRED VAN DER VEUR,
Warden, Central Utah
Correctional Facility,

Respondent.

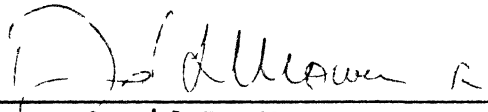
On December 13, 1991 the above case was received in the Sanpete County Clerk's office with a cover letter from the Supreme Court Clerk. A copy of the cover letter is attached to this Notice and by this reference incorporated herein.

This Court is providing it's own NOTICE OF THE TRANSFER so there is no question about it and so that future filings will be proper. For the information of the parties, mailings to the District Court in Sanpete County should be made to the Sanpete County Clerk, 160 North Main Street, Manti, Utah 84642. The County Clerk's telephone number is (801) 835-2131.

Webb vs. Van Der Veur, 10012
Notice, Page -2-

On January 15, 1992, at 10:00 A.M. the Court will consider the Plaintiff's MOTION FOR APPOINTMENT OF COUNSEL. A copy of that Motion is attached hereto and by this reference incorporated herein.

Dated: 1/15/1992




David L. Mower

CERTIFICATE OF SERVICE

I hereby certify that I mailed a full, true and correct copy of the foregoing NOTICE RE: (1) TRANSFER AND (2) HEARING ON MOTION to the following, U.S. mail, postage prepaid, this 15 day of January, 1992.

Charles W. Webb,
Central Utah Correctional Facility,
P.O. Box 550,
Gunnison, UT 84634

Utah Attorney General,
6100 South 300 East, Suite 201,
Murray, UT 84107



Deputy Clerk

1 ' IN THE THIRD CIRCUIT COURT OF THE JUDICIAL DISTRICT OF
2 THE STATE OF UTAH, IN AND FOR THE COUNTY OF SALT LAKE
3 THE STATE OF UTAH,) Case No. 871010419
4 Plaintiff)
5 vs.)
6 CHARLES WEBB,)
7 Defendant.)

BEFORE THE HON. JUDGE GRANT

Transcript of Preliminary Hearing

November 24, 1987

APPEARANCES:

For the State of Utah

James W. Cope
Deputy County Attorney

For the Defendant

Ms. Remal
Jim Bradshaw
Public Defender

1 SALT LAKE CITY, UTAH NOVEMBER 24, 1987

2
3 THE COURT: (inaudible)

4 MR. BRADSHAW: Thank you. As to the progress to
5 what I know about Mr. Martindale and his testimony, it
6 would be that he was at the home shortly at the time the
7 bul -- the robberies is alleged to occurred and that that
8 evening, that same evening, he left the jurisdiction and I
9 would further indicate as to the relevance your Honor, of
10 other crimes. If nothing else, I would ask to go into any
11 agreements that have been made in terms of immunity for
12 those crimes or deferring prosecutions in exchange for the
13 information that he provided in this case. Beyond that
14 your Honor, his wife has testified that she did not provide
15 the information that -- that -- that went to the father-in-
16 law, that -- that eventually came to the police through,
17 what I understand is, this witness' father, and I would ask
18 to go into exactly how the police came to be aware of the
19 information which his wife has related to the court today
20 and also any agreements or arrangements that were made with
21 this individual prior to, or subsequent to, that
22 information being relayed to the police. I think it's not
23 only relevant to this witness' testimony, I think it's also
24 relevant to his wife's testimony. His wife has testified,
25 I'm entitled to know what kind of deals he's getting.

1 THE COURT: Well, we'll just ask Mr. Cope. Then
2 we'll find out as an officer of the court. Has there been
3 any immunity, there been any promises made as to the
4 testimony of these two individuals?

5 MR. COPE: No your Honor.

6 THE COURT: Now, the next question did you want
7 to cover -- the previous witness had no discussion which
8 really, it was your question allowed him the hearsay that
9 her father-in-law's the one who reported it to the police.
10 There's certainly nothing to keep you from asking the
11 father-in-law, is there? So the information you're seeking
12 is available by collateral information. I just -- I just
13 don't see how you can get a bit of information out of this
14 gentleman. As to any of the subsequent events, and
15 certainly if you have any suspicions he's involved in the
16 perpetration of this particular crime, he's pretty well
17 already invoked his rights in that term himself. And
18 basically sitting here, in all fairness, it would be,
19 unless he really knowingly wants to tell, it would be my
20 advice to him not to discuss anything about this particular
21 crime. It's an unusual situation because normally under
22 these circumstances we're dealing with a witness that's
23 called by the State, used by the State, and we have that
24 dilemma.

25 In this case this witness was not called and

1 used by the State, and in fact, informed by the Court he
2 would not be anticipated to be used against the co-
3 defendant.

4 MR. BRADSHAW: In -- in that regard, your Honor,
5 I think the record should reflect that he was subpoenaed
6 and brought here by the State --

7 THE COURT: No question about that.

8 MR. BRADSHAW: -- and was only called by the
9 defense after he was not called by the State.

10 THE COURT: No question that I think the
11 defendant's rights have an opportunity to eventually have
12 him here. It still doesn't solve the dilemma against self-
13 incrimination. It's not an issue -- I have no problem with
14 that, but the fact of the matter is, he wasn't on call by
15 the State and that the -- the same issue is -- I'm even
16 trying to figure out if I can appoint counsel to represent
17 him. I'm sure we can. Never ever had to appoint counsel
18 until a person's charged. I'm sure we can under the
19 Miranda, it shouldn't be any problem. And I got faith in
20 the guys that do your substitute work that they'd tell him
21 not to talk, so why don't we just get on with it. If you
22 want to wait for over to tomorrow and hopefully the time
23 prevails itself, I don't have any problems dealing with
24 this tomorrow, but I -- I think it's just an exercise in
25 futility. What do you want to do?

1 MR. BRADSHAW: We'd ask -- we'd ask to have it
2 set over to tomorrow your Honor. We can make the
3 arrangements if Mr. Cope can make the witness available.
4 We can certainly have a talk with Mr. Hill who will contact
5 a -- a conflict attorney. I can have them contact Mr. Cope
6 who can then put them in contact with the witness I'm sure
7 by ten o'clock tomorrow.

8 MR. COPE: Your Honor, Mr. Martindale, I think,
9 had anticipated getting on an airplane this evening and
10 returning home with his wife. Ah, we had subpoenaed him
11 for today, if the court is continuing these matters and
12 he's been called by the defense, I hate to use the term
13 "wash my hands of him," cause it's not exactly what we're
14 doing, but I just don't feel it's our responsibility to
15 house him and -- and feed him and get an attorney for him.
16 I wonder if there might be someone else who would more
17 properly do that.

18 THE COURT: Well, I don't think it will bankrupt
19 the County if they have to pop for a motel.

20 MR. COPE: Oh, I think they're willing to do
21 that, but --

22 THE COURT: So I don't -- that isn't a problem.
23 Ah, I just don't -- I just don't see how anything else is
24 going to come of it. We'll come in here tomorrow and
25 whenever you come here tomorrow he'll have an attorney that

1 tells him -- I told him not to testify, (inaudible) either
2 way.

3 MS. REMAL: Your Honor, I think what we need to
4 know --

5 THE COURT: The other alternative is that
6 something might happen and Mr. Humphreys and Mr. Webb will
7 be languishing for seven more days in the County jail and
8 they would have to in the normal processing of this case,
9 and I think that's something you have to deal with too.

10 MS. REMAL: Well, we can certainly to deal with
11 that tomorrow if that arises.

12 THE COURT: And even as much as two weeks.

13 MS. REMAL: Your Honor, I think what Mr. Bradshaw
14 was asking is if -- we would need to be able to put the
15 conflict attorney in touch with Mr. Martindale and just
16 need to know how -- how to do that in order to accomplish
17 that in the morning. Can we --

18 THE COURT: Well, I presume it would have to be
19 done before nine o'clock in the morning, before the
20 busyness of the courts start to gear up.

21 MS. REMAL: But can we do that through you Jim?
22 Have --

23 MR. COPE: Yes, if you'll call my office, we'll
24 know where he is.

25 MS. REMAL: Okay.

1 THE COURT: I would think that you would have to
2 have a conflicts attorney, at Mr. Cope's office somewhere
3 around nine, nine fifteen in the morning.

4 MS. REMAL: Or we'll at least have one --

5 THE COURT: Mr. Cope would have to provide this
6 gentleman --

7 MS. REMAL: -- put a call in.

8 THE COURT: -- to be there, Mr. Martindale.

9 MS. REMAL: That's fine.

10 THE COURT: And he can converse with him there.

11 MS. REMAL: And what time to you want us to come
12 back? At nine thirty, or --

13 THE COURT: Well, I have a class at the
14 University of Utah until a quarter after. I'll be here
15 about nine-thirty. We have about eight matters on the
16 calendar tomorrow at nine-thirty and two jury trials, that
17 I'm not sure of the statuses. So we'll just have to deal
18 with it as we deal with it.

19 MS. REMAL: What time --

20 THE COURT: (inaudible). Well, it sounds like
21 one jury showing up.

22 MS. REMAL: What time will you ask the jail to
23 bring out the defendants? We'll be here then.

24 THE COURT: I probably won't ask the jail to
25 bring out the defendant til sometime after eleven o'clock

1 just -- we'll have time for all of this stuff to get back
2 together.

3 MS. REMAL: Should we report back here at eleven
4 o'clock, does that suit your calendar?

5 THE COURT: If you promise not to get lost, til
6 (inaudible).

7 MS. REMAL: We won't get lost.

8 THE COURT: Good.

9 MS. REMAL: We'll be here.

10 THE COURT: We'll just have to figure out when to
11 have the -- the defendants brought up from jail.

12 MR. COPE: Your Honor --

13 THE COURT: The transportation officer of the day
14 (inaudible).

15 MR. COPE: Your Honor, I believe that the witness
16 would probably appreciate the court's concession on behalf
17 of his employer. We informed them that he would be back to
18 work tomorrow.

19 THE COURT: I'm sure we can give you a note to
20 take home to your employer indicating that the court
21 required (inaudible). No problem. Hopefully I'd like to
22 see him out of here by noon.

23 MR. COPE: I'd like to see him out of here
24 earlier than that your Honor.

25 THE COURT: Well, we may, if he refuses to talk,

1 there's no -- (inaudible). So, enjoy a free night on the
2 County and what the order of events is going to be. If
3 he's simply going to refuse to testify, I want to know that
4 as soon as possible. If he's going to testify, then
5 obviously we're going to have to make some time.

6 MR. BRADSHAW: What do you feel -- (inaudible)
7 that you at least call your (inaudible), you'll know where
8 it is.

9 (End of case)

10 End of Page

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TRANSCRIBER'S CERTIFICATE

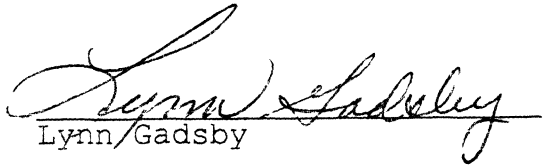
STATE OF IDAHO)
) ss.
County of Twin Falls)

I, LYNN GADSBY, do hereby certify:

That the foregoing was transcribed by me
from the tape recorded cassettes, and that the transcript
is true and correct to the best of my ability from the
portions of the proceedings that could be heard on the
tapes, consisting of pages numbered 1 through 9 inclusive;

I further certify that I have no interest in
the event of this action.

DATE This 7th day of August, 1992.


Lynn Gadsby

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

CC 8800208
OTN C-735781
CHARGE(S): Rd 1st
Consp

vs.

Charles W. Webb

COMMONWEALTH'S PETITION FOR NOLLE PROSSE

AND NOW, comes the Commonwealth of Pennsylvania, by its Attorneys, ROBERT E. COLVILLE, District Attorney of Allegheny County, Pennsylvania, and Colville, Assistant District Attorney, and moves this Court for Nolle Prose in the above-captioned case for the following reason(s):

1. After serving 5 yrs to life in Utah + 54 mos. Consec. time. Also entire case is based on a statement of D After Rags Martindale taken in Utah + who is no longer available. Also Martindale case at CL 8800211 has been nolle prossed. This acter was whole but on the store
2. The present status of this case is: Pre-Preliminary Hearing
Pre-Information ☒ Information Filed
3. The defendant is in/on: Jail Bail/ROR NEI/BF MH Com

Respectfully submitted,

ROBERT E. COLVILLE, DISTRICT ATTORNEY

DATE: _____

BY: _____

Colville
ASSISTANT DISTRICT ATTORNEY

VICTIM/POLICE OFFICER VERIFICATION

I am the victim or prosecuting police officer in this matter. I have read this Petition and I hereby consent to Nolle Prose this case.

Case discussed with Det Mike Randall
2 yrs ago + he agrees

ORDER OF COURT

AND NOW, to-wit, this 13 day of APRIL, 1982
after consideration of the above Petition, it is hereby ORDERED that
this case is Nolle Prossed. Costs shall be imposed on the COUNTY.

BY THE COURT:

[Signature] J.

APPEALING →